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INTERSTATE COMMERCE COMMISSION

STEPTOE & JOHNSON

1250 CONNECTICUT AVENUE

WASHINGTON, D. C. 20036

CHERYL A. SKIGIN
(202) 862-2053

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RECORDATION NO. _____ Filed 1425

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INTERSTATE COMMERCE COMMISSION

February 14, 1980 11498-~~A~~

RECORDATION NO. _____ Filed 1425

Ms. Agatha Mergenovich
Secretary
Interstate Commerce Commission
Office of the Secretary
SE Room 2215
Washington, D.C. 20423

No.

Date

Fee \$

ICC Washington, D. C.

0-045A049

FEB 14 1980

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INTERSTATE COMMERCE COMMISSION

11498-~~B~~
RECORDATION NO. _____ Filed 1425

FEB 19 1980 3 10 PM
INTERSTATE COMMERCE COMMISSION

Dear Ms. Mergenovich:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. § 11303 are several copies of the following documents which relate to the railroad equipment hereafter identified:

1. Equipment Trust Agreement by and between Connecticut Bank and Trust Company as Trustee and Brae Corporation dated as of January 1, 1980.

2. An Assignment of Lease and Agreement dated as of February 11, 1980, by and between Brae Corporation and Connecticut Bank and Trust Company assigning the Lease Agreement entered into by and between Chicago West Pullman and Southern Railroad and Brae Corporation dated as of August 14, 1979.

3. A Substitution Agreement Number Two dated as of February 13, 1980, by and between Brae Corporation and Columbia & Cowlitz Railway Company substituting Equipment Schedules Nos. Two, Three and Four in place of the Equipment Schedule dated July 13, 1979, attached to the Lease previously recorded as document number 9875-0.

4. A Lease Agreement dated as of August 14, 1979, between Brae Corporation and the Chicago, West Pullman and Southern Railroad Company.

5. An Assignment of Lease and Agreement dated as of February 11, 1980, by and between Brae Corporation and Connecticut Bank and Trust Company assigning the Lease Agreement

Ms. Agatha Mergenovich
February 14, 1980
Page 2

entered into by and between Columbia & Cowlitz Railway Company and Brae Corporation dated as of July 13, 1979.

6. A Substitution Agreement dated as of February 8, 1980¹⁰ between Brae Corporation and the Chicago, West Pullman and Southern Railroad Company.

The equipment subject to these agreements is described more fully in the schedules attached to the Substitution Agreements.

Please file and record the documents previously enumerated and cross-index them under the names set forth above. Each document should be indexed under Brae Corporation and the Connecticut Bank and Trust Company. In addition, the Lease, Assignment and Substitution Agreements pertaining to the Chicago, West Pullman and Southern Railroad should be indexed under the Chicago, West Pullman and Southern Railroad and the Substitution Agreement and the Assignment of the Columbia & Cowlitz Railway Company should be indexed under the Columbia Cowlitz Railway. An additional \$50.00 has been included in the filing fee for this cross-indexing.

Since the documents are related to the same transaction, it is requested that all be assigned the same recordation number with consecutive letter designations for all documents after the first listed above.

A check payable to the Interstate Commerce Commission in the amount of \$180.00 is enclosed to cover the filing fees and the extra fees for cross-indexing.

Please return to the person presenting this letter your fee receipt, the enclosed copies of this letter and any copies of the documents not required for recordation, all stamped to indicate appropriate filing information.

Very truly yours,


Cheryl A. Skigin

Enclosures

Ms. Agatha Mergenovich
February 14, 1980
Page 3

The names and addresses of the parties to the transactions evicenced by the foregoing documents are as follows:

Company - Assignor - Lessor
Brae Corporation
3 Embarcadero Center Suite 1760
San Francisco, CA 94111

Trustee - Assignee
Connecticut Bank and Trust Company
1 Constitution Plaza
Hartford, CN 06115

Lessee
Chicago West Pullman & Southern Railroad
2728 East 104th Street
Chicago, Il 60617

Lessee
Columbia & Cowlitz Railway Company
P.O. Box 188
Longview, WA 98632

Interstate Commerce Commission
Washington, D.C. 20423

2/19/80

OFFICE OF THE SECRETARY

**Cheryl A. Skigin
Steptoe & Johnson
1250 Connecticut Avenue
Washington, D.C. 20036**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **2/19/80** at **3:10pm**, and assigned re-recording number(s). **11498, 11498-A, 11498-B, 11498-C, 11498-D
11498-E**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

TABLE OF CONTENTS

	<u>Page</u>
RECITALS	1
FORM OF TRUST CERTIFICATE	2
ARTICLE ONE - DEFINITIONS	6
ARTICLE TWO - TRUST CERTIFICATES AND ISSUANCE THEREOF	24
Section 2.01. Issuance of Trust Certificates ...	24
Section 2.02. Interests Represented by Trust Certificates; Interest; Maturity	25
Section 2.03. Prepayments	26
Section 2.04. Forms of Trust Certificates and Guaranty	30
Section 2.05. Execution by Trustee	30
Section 2.06. Transfer and Exchange	31
Section 2.07. Loss, etc., of Trust Certificates	32
ARTICLE THREE - ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH	33
Section 3.01. Acquisition of Equipment by Trustee	33
Section 3.02. Payment of Deposited Cash	34
Section 3.03. Supporting Papers	34
Section 3.04. Prepayment from Deposited Cash ...	38
ARTICLE FOUR - LEASE OF TRUST EQUIPMENT TO THE COMPANY	38
Section 4.01. Lease of Trust Equipment	38
Section 4.02. Equipment Automatically Subjected	38
Section 4.03. Additional and Substituted Equipment Subjected Hereto	39
Section 4.04. Rental Payments	39
Section 4.05. Termination of Lease	40
Section 4.06. Replacement of Trust Equipment ...	41

	<u>Page</u>
Section 4.07. Marking of Trust Equipment	44
Section 4.08. Maintenance of Trust Equip- ment; Unprotected Units; Casualty Occurrences	45
Section 4.09. Possession of Trust Equipment; Security Interest in Leases	48
Section 4.10. Maintenance of Insurance	51
Section 4.11. Indemnity	53
ARTICLE FIVE - EVENTS OF DEFAULT AND REMEDIES	54
Section 5.01. Events of Default	54
Section 5.02. Remedies	61
Section 5.03. Application of Proceeds	62
Section 5.04. Waivers of Default	63
Section 5.05. Obligations of the Company Not Affected by Remedies	64
Section 5.06. The Company to Deliver Trust Equipment to Trustee	64
Section 5.07. Trustee to Give Notice of Default	65
Section 5.08. Limitations on Suits by Holders of Trust Certifi- cates	65
Section 5.09. Unconditional Right of Holders of Trust Certifi- cates to Sue for Principal and Interest	66
Section 5.10. Control by Holders	66
Section 5.11. Remedies Cumulative	66
ARTICLE SIX - ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY	67
Section 6.01. Guaranty of Company	67
Section 6.02. Miscellaneous Affirmative Covenants	67
Section 6.03. Further Assurances	71
Section 6.04. Trustee's Right to Perform for the Company	71
Section 6.05. Negative Covenants	71
(a) Consolidated Stock- holders' Equity	71

	<u>Page</u>
(b) Restricted Junior Pay- ments and Restricted Investments	71
(c) Liens	72
(d) Short-Term Debt and Funded Debt	75
(e) Investments	76
(f) Stock and Debt of Restricted Subsidiary	77
(g) Merger and Sale of Assets	78
(h) Sale and Leasebacks	81
(i) Sale or Discount of Re- ceivables	81
(j) Certain Contracts	81
(k) Line of Business	83
(l) Transactions with Stock- holders and Affiliates	84
(m) Debt Service	84
(n) Leases, etc.	84
Section 6.06 Covenant to Secure Trust Certificates	85
ARTICLE SEVEN - EVIDENCE OF RIGHTS OF HOLDERS OF TRUST CERTIFICATES	85
Section 7.01. Execution of Instruments	85
Section 7.02. Proof of Execution of Instru- ments and of Holding of Trust Certificates	85
Section 7.03. Trust Certificates Owned by the Company	86
ARTICLE EIGHT - THE TRUSTEE	86
Section 8.01. Acceptance of Trust	86
Section 8.02. Duties and Responsibilites of the Trustee	86
Section 8.03. Application of Rentals	89
Section 8.04. Funds Held by Trustee; Permitted Investments	89

	<u>Page</u>
Section 8.05. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; Compensation of Trustee; etc. ..	91
Section 8.06. Resignation and Removal; Successor Trustees	92
Section 8.07. Acceptance of Appointment by Successor Trustee	93
Section 8.08. Merger or Consolidation of Trustee	93
ARTICLE NINE - MISCELLANEOUS PROVISIONS	94
Section 9.01. Benefits Restricted to Parties and Holders	94
Section 9.02. Amendment or Waiver	94
Section 9.03. Illegality or Invalidity of Provision	95
Section 9.04. Date of Actual Execution	95
Section 9.05. Notices	95
Section 9.06. Successors and Assigns	96
Section 9.07. Effect of Headings	96
Section 9.08. Applicable Law	96
Section 9.09. Counterparts	96
SCHEDULE A. Description of Trust Equipment	
SCHEDULE B. Form of Lease	
SCHEDULE C. Form of Assignment of Lease and Agreement	

EQUIPMENT TRUST AGREEMENT dated as of January 1, 1980 between THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation (the "Trustee"), and BRAE CORPORATION, a Delaware corporation (the "Company").

WHEREAS the Company has agreed to cause to be sold, transferred and delivered to the Trustee the railroad equipment described in Schedule A hereto;

WHEREAS title to such railroad equipment is to be vested in and is to be retained by the Trustee, and such railroad equipment is to be leased to the Company hereunder;

WHEREAS the Trust Certificates (as hereinafter defined) are to be issued and sold from time to time in an aggregate principal amount not exceeding \$10,000,000, and the proceeds of such sale are to be deposited in trust with the Trustee and are to constitute a fund to be known as BRAE Corporation Equipment Trust, First 1980 Series, to be applied by the Trustee as provided herein;

WHEREAS the Company has agreed to give and assign to the Trustee, as security for the obligations of the Company hereunder, a security interest in all the Company's right, title and interest in and to the leases described in Schedule A hereto and any and all leases hereinafter entered into with respect to the Trust Equipment (as hereinafter defined), to the extent that such right, title and interest relate to Trust Equipment, including all rents, moneys and proceeds due or to become due with respect to the Trust Equipment under such leases;

WHEREAS the Company is entering into this Agreement and endorsing its guaranty on the Trust Certificates as an inducement to the purchase of the Trust Certificates by the purchaser or purchasers thereof;

WHEREAS the text of the Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the following forms, respectively:

[Form of Trust Certificate]

No. _____

[Date]

\$ _____

BRAE CORPORATION
12.875% Equipment Trust Certificate
First 1980 Series
Due February 28, 1995

THE CONNECTICUT BANK AND TRUST COMPANY,
Trustee

THE CONNECTICUT BANK AND TRUST COMPANY, as Trustee (the "Trustee") under an Equipment Trust Agreement (the "Equipment Trust Agreement") dated as of January 1, 1980 between the Trustee and BRAE Corporation, a Delaware corporation (the "Company"), certifies that or * is entitled to an interest of \$ principal amount in BRAE Corporation Equipment Trust, First 1980 Series, due and payable on or before February 28, 1995, in installments as hereinafter provided, and to interest on the amount of unpaid principal from time to time due and owing pursuant to this Trust Certificate, due and payable quarterly on the last day of February, May, August and November in each year, commencing on the first such date occurring after the date hereof (provided that any interest payable hereunder within 30 days after the original issuance hereof shall be carried over to the next date interest is payable hereunder), at the rate of 12.875% per annum from the date hereof until such principal amount becomes due and payable, with interest on any overdue principal and premium (if any) and, to the extent permitted by applicable law, on any overdue interest, at the rate of 13.875% per annum. Interest shall be computed hereunder on the basis of a 360-day year of twelve 30-day months.

* Insert "registered assigns" or "order" depending on whether the Trust Certificate is to be a registered Trust Certificate or an order Trust Certificate.

Payments of principal and interest shall be payable by the Trustee at the office of the Trustee at One Constitution Plaza, Hartford, Connecticut 06115, Attention: Corporate Trust Department (the "Corporate Trust Office"), in immediately available funds in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Each of such payments shall be made only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Equipment Trust Agreement.

The original principal amount of this Trust Certificate is due and payable in 60 consecutive quarterly installments, each such installment in an amount equal to the amount obtained by subtracting the interest due hereon on the date of payment from 3.784298% of the original principal amount hereof, on the last day of February, May, August and November in each year, commencing May 31, 1980 and ending February 28, 1995, both inclusive, except to the extent prepayments are applied as provided in the Equipment Trust Agreement to the prepayment of installments (the final installment being in any event in an amount equal to the remaining principal amount owing on this Trust Certificate). This Trust Certificate is subject to prepayment in whole or in part, in certain cases with a premium, in other cases without a premium, as specified in the Equipment Trust Agreement.

This Trust Certificate is one of an authorized issue of Trust Certificates, in an aggregate principal amount not exceeding \$10,000,000, issued or to be issued under the Equipment Trust Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Equipment Trust Agreement as "Permitted Investments" in lieu thereof, as provided in the Equipment Trust Agreement) is held by the Trustee in trust for the equal and ratable benefit of the holders of the outstanding Trust Certificates issued thereunder. Reference is made to the Equipment Trust Agreement (a copy of which is on file with the Trustee at the Corporate Trust Office) for a more complete statement of the terms and provisions thereof, to all of which the holder hereof, by accepting this Trust Certificate, assents.

*The Trust Certificates are issuable as either registered or order Trust Certificates. This Trust Certificate is a registered Trust Certificate and is transferable only by the registered holder hereof in person or by attorney duly authorized in writing on registration books to be kept for that purpose at the Corporate Trust Office of the Trustee, upon surrender for cancellation of this Trust Certificate, and thereupon a new Trust Certificate or Certificates, in authorized denominations aggregating the same principal amount as the unpaid principal amount of the Trust Certificate surrendered, of like maturity and bearing a like rate of interest, will be issued to the transferee in exchange therefor, all in the manner provided in the Trust Agreement. Prior to due presentment for registration of transfer the Trustee and the Company may deem and treat the person in whose name this Trust Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal, premium (if any) and interest and for all other purposes and shall not be affected by any notice to the contrary.

**The Trust Certificates are issuable as either registered or order Trust Certificates. This Trust Certificate is an order Trust Certificate and is transferable by endorsement and delivery.

In case of the happening of an Event of Default (as defined in the Equipment Trust Agreement) all installments of principal (and interest accrued thereon) represented by this Trust Certificate may become or be declared due and payable in the manner and with the effect provided in the Equipment Trust Agreement.

The provisions of this Trust Certificate, and all the rights and obligations of the Trustee, the Company and the holder hereof, shall be governed by and construed in accordance with the laws of the State of New York.

* This paragraph to be used if the Trust Certificate is a registered Trust Certificate.

** This paragraph to be used if the Trust Certificate is an order Trust Certificate.

IN WITNESS WHEREOF, the Trustee has caused
this Trust Certificate to be signed by one of its duly
authorized officers.

THE CONNECTICUT BANK AND TRUST
COMPANY, as Trustee

By _____
Title:

[Form of Guaranty Endorsement on
Trust Certificate]

GUARANTY

BRAE Corporation, a Delaware corporation, for
valuable consideration, hereby unconditionally guarantees
to the holder of the within Trust Certificate the prompt
payment when due of the principal of, and interest and
premium (if any) on, such Trust Certificate, with interest
on any overdue principal and premium (if any) and, to the
extent permitted by applicable law, on any overdue interest,
at the rate of 13.875% per annum, payable on demand, all in
accordance with the terms of such Trust Certificate and the
Equipment Trust Agreement referred to therein.

BRAE CORPORATION

By _____
Vice President

NOTATION OF PREPAYMENT*

By reason of payments having heretofore been
applied to pay or prepay installments, the within Trust
Certificate in the principal amount of \$ _____ was, as

* To be included only on Trust Certificates issued upon
exchange or transfer.

of _____, 19____, payable in _____ consecutive installments of principal, each such installment in an amount equal to the amount obtained by subtracting the interest due hereon on such installment payment date from \$ _____, on the last day of February, May, August and November in each of the years 19____ through 1995, commencing _____, 19____, and payable by a final such installment of \$ _____ on February 28, 1995 (the final installment being in any event in an amount equal to the remaining principal amount owing on the within Trust Certificate).

THE CONNECTICUT BANK AND TRUST
COMPANY, as Trustee

By _____
Title: _____

; and

WHEREAS it is desired to secure to the Holders of the Trust Certificates the payment of the principal thereof, as hereinafter more particularly provided, with interest and premium (if any) thereon, as hereinafter provided, payable quarterly in each year, and to evidence the rights of the Holders of the Trust Certificates in substantially the form hereinbefore set forth;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

ARTICLE ONE

DEFINITIONS

The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

AAR Value shall mean, with respect to any unit of Equipment, the value of such unit as determined in accordance with the Code of Rules Governing the Condition of and Repairs to Freight and Passenger Cars for the Interchange of Traffic, adopted by the Association of American Railroads, Operations and Maintenance Department, Mechanical Division, as in effect at the time in question.

Adjusted Consolidated Net Income shall mean, for any period, Consolidated Net Income for such period determined after excluding from gross revenues any interest earned by the Company and its Restricted Subsidiaries on Investments made out of the proceeds of publicly-offered equipment trust obligations or similar securities, and after excluding from expenses any interest paid by the Company or its Restricted Subsidiaries on such equipment trust obligations or similar securities, provided that, if the interest paid on such equipment trust obligations or similar securities shall exceed the interest earned on such Investments, the excess of the interest paid over the interest earned shall be taken into account as an expense.

Affiliate of any corporation shall mean any Person which, directly or indirectly, controls, or is controlled by, or is under common control with, such corporation. For the purposes of this definition, "control" (including "controlled by" and "under control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities or by contract or otherwise. For the purposes of this definition ownership of 5% or more of the equity securities of any corporation (or equity interests in any Person which is not a corporation) shall be deemed to be sufficient to grant the power to direct the management and policies of such corporation or other Person.

Assigned Value of a unit of Trust Equipment shall mean, as of the date of any determination thereof, an amount equal to the product of (a) the principal amount of the Trust Certificates then outstanding multiplied by (b) a fraction the numerator of which is the Cost of such unit of Trust Equipment and the denominator of which is the sum of the Cost of all units of Trust Equipment then subject to this Agreement plus the amount of cash then held by the Trustee under Section 4.08(c).

Board shall mean the Board of Directors of the Company or a committee of directors properly exercising the relevant powers of the Board.

Business Day shall mean any day other than a Saturday, a Sunday or a holiday scheduled by law for any commercial banking institution in New York, Connecticut or California.

Capitalized Lease shall mean any lease of real or personal property which, in accordance with Generally Accepted Accounting Principles, should be capitalized on the lessee's balance sheet or for which the amount of the asset and liability thereunder as if so capitalized should be disclosed in a note to such balance sheet (excluding, in the case of the Company or a Restricted Subsidiary, leases under which the Company or a Restricted Subsidiary is the lessor and leases of office space, automobiles or data processing and office equipment).

Capitalized Lease Rentals shall mean, with respect to all Capitalized Leases of any lessee, the aggregate amount of the obligations of such lessee thereunder which would, in accordance with Generally Accepted Accounting Principles, appear on a balance sheet of such lessee in respect of such Capitalized Leases or otherwise be disclosed as such in a note to such balance sheet.

Casualty Occurrence shall have the meaning specified in Section 4.08.

Company shall mean BRAE Corporation, a Delaware corporation, or a successor to it permitted by Section 6.05(g)(i)(A) or 6.05(g)(ii)(A).

Consolidated Borrowing Base shall mean the sum of Consolidated Stockholders' Equity and Subordinated Funded Debt.

Consolidated Cash Flow shall mean, with respect to any date of determination as of the end of any fiscal year of the Company, the sum (without duplication) of (a) Consolidated Net Income for such fiscal year, (b) all provision for depreciation, amortization and reserves for deferred income taxes deducted in determining Consolidated Net Income for such fiscal year, and (c) all cash and Permitted Investments (but not exceeding an amount equal to 50% of Consolidated Current Maturities as of the end of such fiscal year) properly appearing on a consolidated balance sheet of the Company and its Restricted Subsidiaries prepared in accordance with Generally Accepted Accounting Principles as of the end of such fiscal year.

Consolidated Current Maturities shall mean, as of the end of any fiscal year of the Company, any portion of Consolidated Funded Debt outstanding on such date which

by its terms or the terms of any instrument or agreement relating thereto matures on demand or within one year of such date (whether by way of any sinking fund, other required prepayment or final payment at maturity) and is not directly or indirectly renewable, extendible or refundable, at the option of the debtor under an agreement or firm commitment in effect on such date, to a date one year or more from such date.

Consolidated Earnings Available for Interest Coverage shall mean, as of the date of any determination thereof, the sum of (a) Adjusted Consolidated Net Income, (b) all taxes based on income included as expenses in computing Adjusted Consolidated Net Income, and (c) Consolidated Interest Expense, in each case for the 12 months' period ending on the last day of the most recent fiscal quarter of the Company prior to such date of determination.

Consolidated Funded Debt shall mean the aggregate of Funded Debt of the Company and its Restricted Subsidiaries, determined on a consolidated basis after eliminating all intercompany items and all other items which should be eliminated in accordance with Generally Accepted Accounting Principles.

Consolidated Interest Expense shall mean, as of the date of any determination thereof, the sum of (a) the aggregate interest charges (including amortization of Debt discount) paid or accrued on all Consolidated Funded Debt and on all Consolidated Short-Term Debt (except the portion of rental payments representing interest charges on Capitalized Leases and except that interest charges on publicly-offered equipment trust obligations or similar securities shall be included only to the extent that such interest charges are taken into account in the computation of Adjusted Consolidated Net Income) and (b) one-third of the aggregate rentals paid or accrued by the Company and its Restricted Subsidiaries with respect to all leases of real or personal property (including aggregate rentals paid or accrued with respect to Capitalized Leases), in each case for the 12 months' period ending on the last day of the most recent fiscal quarter of the Company prior to such date of determination, provided that any interest charges or rentals paid or accrued by any Person acquired by the Company or any Restricted Subsidiary through purchase, merger or consolidation or otherwise shall be included only from the date from which the earnings of such Person were included in Consolidated Net Income.

Consolidated Net Income shall mean for any period the consolidated gross revenues of the Company and its Restricted Subsidiaries (including dividends received in cash from any Subsidiary) for such period less all operating and non-operating expenses of the Company and its Restricted Subsidiaries including all charges of a proper character for such period (including current and deferred taxes on income, provision for taxes on unremitted foreign earnings which are included in gross revenues, and current additions to reserves), but not including in gross revenues (a) any gains (net of expenses and taxes applicable thereto) in excess of losses resulting from the sale, conversion or other disposition of capital assets (i.e., assets other than current assets), (b) any gains resulting from the write-up of assets, (c) any equity of the Company or any Restricted Subsidiary in the unremitted earnings of any corporation which is not a Restricted Subsidiary, (d) any earnings of any Person acquired by the Company or any Restricted Subsidiary through purchase, merger or consolidation or otherwise prior to the date of acquisition, (e) net earnings of any Restricted Subsidiary allocable to a minority interest in such Subsidiary, (f) the undistributed earnings of any Restricted Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary is not at the time permitted by the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Restricted Subsidiary, (g) any restoration to income of any contingency reserve, except to the extent that provision for such reserve was made out of income accrued during such period, (h) the proceeds of any life insurance policies, or (i) any deferred credit representing the excess of equity in any Restricted Subsidiary at the date of acquisition over the cost of the investment in such Restricted Subsidiary, all determined in accordance with Generally Accepted Accounting Principles.

Consolidated Senior Funded Debt shall mean the aggregate of Senior Funded Debt of the Company and its Restricted Subsidiaries, determined on a consolidated basis after eliminating all intercompany items and all other items which should be eliminated in accordance with Generally Accepted Accounting Principles.

Consolidated Short-Term Debt shall mean the aggregate of Short-Term Debt of the Company and its Restricted Subsidiaries, determined on a consolidated

basis after eliminating all intercompany items and all other items which should be eliminated in accordance with Generally Accepted Accounting Principles.

Consolidated Stockholders' Equity shall mean the sum of (a) the par value (or value stated on the books of the Company) of the issued capital stock of all classes of the Company, plus (or minus in the case of a surplus deficit) (b) the amount of the consolidated surplus, whether capital or earned, of the Company and its Restricted Subsidiaries, less (c) the aggregate amount of any Investments in any Unrestricted Subsidiaries or any Investments (other than Permitted Investments) in any Persons in which the Company or its Restricted Subsidiaries do not have a majority ownership interest or of which the Company or a Restricted Subsidiary is not the sole general partner.

Consolidated Tangible Net Worth shall mean the gross book value of the assets of the Company and its Restricted Subsidiaries (including leased property to which Capitalized Lease Rentals are applicable, but excluding intangible assets, unamortized Debt discount and expense, goodwill, patents, trademarks, trade names, organization expense, treasury stock, any write-up of assets and other like intangibles), minus (a) all reserves and deductions, including those for depreciation, depletion, amortization, bad debt losses, deferred taxes, and minority interest, (b) all liabilities, and (c) all Investments (other than Permitted Investments), all determined on a consolidated basis in accordance with Generally Accepted Accounting Principles.

Consolidated Working Capital shall mean the excess of consolidated current assets over consolidated current liabilities of the Company and its Restricted Subsidiaries, both determined in accordance with Generally Accepted Accounting Principles, provided that there shall not be included in current assets (a) any loans (other than Permitted Investments) or advances made by the Company or any Restricted Subsidiary except travel and other like advances to officers and employees in the ordinary course of business, or (b) any assets located outside (including any amounts payable by Persons located outside) the United States of America and the Dominion of Canada except for amounts payable on leases of railroad equipment by Persons located in Mexico to the extent such amounts in the aggregate are equal to or less than 5% of the consolidated

current assets of the Company and its Restricted Subsidiaries (computed for this purpose without regard to any such amounts payable by Persons located in Mexico).

Corporate Trust Office shall mean the principal office of the Trustee in the State of Connecticut, City of Hartford, at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is, on the date of execution of this Agreement, located at One Constitution Plaza, Hartford, Connecticut 06115.

Cost, when used with respect to Equipment listed on Schedule A hereto (together with Equipment substituted therefor pursuant to the second paragraph of Section 3.01, "Schedule A Equipment") which is not built by the Company or an Affiliate of the Company, shall mean the actual cost thereof to the Company or such Affiliate, and, when used with respect to such Equipment which is built by the Company or any such Affiliate, shall mean so-called "car builder's cost" including direct cost of labor and material and overhead (including, without limitation, inspection and delivery charges, duty and sales taxes), but excluding any manufacturing profit. The "Cost" of Equipment substituted pursuant to Sections 4.06 and 4.08 for Schedule A Equipment shall be equal to the Cost (as determined in accordance with the immediately preceding sentence) of the Schedule A Equipment for which such Equipment is substituted, such Cost to be allocated among the units of such substituted Equipment to the extent necessary.

Debt of any Person shall mean (without duplication)

(a) any indebtedness for borrowed money which such Person has directly or indirectly created, incurred or assumed, and

(b) any indebtedness, whether or not for borrowed money, secured by any Lien in respect of property owned by such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, including any Capitalized Lease Rentals, and

(c) any indebtedness, whether or not for borrowed money, with respect to which such Person has become directly or indirectly liable and which represents or has been incurred to finance the pur-

chase price (or a portion thereof) of any property or services or business acquired by such Person, whether by purchase, consolidation, merger or otherwise, and

(d) any indebtedness of any other Person of the character referred to in subdivisions (a), (b) or (c) of this definition which is guaranteed, directly or indirectly in any manner, by the Person whose Debt is being determined or which is endorsed (otherwise than for collection or deposit in the ordinary course of business) or discounted with recourse or any such indebtedness which has the substantially equivalent or similar economic effect of being guaranteed by such Person, or of otherwise making such Person contingently liable therefor, through an agreement or otherwise, including, without limitation, any agreement described in Section 6.05(j) except those guaranties and indemnities of the kind and nature described in Section 6.05(j)(v)(A)-(H).

Deposited Cash shall mean the aggregate of (a) the proceeds from the sale of the Trust Certificates deposited with the Trustee pursuant to Section 2.01 and, when required or indicated by the context, any Permitted Investments purchased by the use of such proceeds pursuant to the provisions of Section 8.04, and (b) any sums restored to Deposited Cash from rentals pursuant to Section 4.04(a) and on deposit with the Trustee.

Equipment shall mean standard-gauge railroad freight boxcars or gondola cars (AAR Mechanical Designations XF, XM, XP or GB) which were placed in service on or after January 1, 1980.

Event of Default shall mean any event or condition specified in Section 5.01.

Funded Debt of any Person shall mean all Debt of such Person which by its terms or by the terms of any instrument or agreement relating thereto matures one year or more from, or is directly or indirectly renewable or extendible at the option of such Person to a date one year or more (including an option of such Person under a revolv-

ing credit or similar agreement obligating the lender or lenders to extend credit over a period of one year or more) from, the date of the creation thereof.

Generally Accepted Accounting Principles shall mean generally accepted accounting principles in effect at the time of any computation hereunder where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made, except that, for the purposes of determining whether a lease is a Capitalized Lease, Generally Accepted Accounting Principles shall mean generally accepted accounting principles in effect on January 1, 1980.

Holder, when used with respect to the Trust Certificates, shall include the plural as well as the singular number and shall mean (a) the Person in whose name any such Trust Certificate is registered or (b) the person to whose order any such Trust Certificate is payable (or, subject to the third sentence of section 11 of the Purchase Agreement, any transferee thereof upon endorsement and delivery of such Trust Certificate).

Inchoate Event of Default shall mean any event or condition which after the giving of notice or the lapse of time or both would become an Event of Default.

Investments shall mean (a) any investment by the Company and its Restricted Subsidiaries in any property of any other Person, (b) any purchase by the Company and its Restricted Subsidiaries of any stock or other securities or evidences of indebtedness of any other Person, and (c) any capital contributions, loans or advances (including the amount by which the fair market value exceeds the cost basis of any property sold or transferred) by the Company and its Restricted Subsidiaries to any other Person, provided that in computing the amounts involved in any such Investment:

(i) undistributed earnings of, and interest accrued in respect of Debt owing by, such Person, accrued after the date of the Investment, shall not be included;

(ii) there shall not be deducted from the amounts invested in such Person any amounts received as earnings (in the form of dividends or

interest or otherwise) on the Investment in, or as loans from, such Person;

(iii) increases or decreases in value, or write-ups, write-downs or write-offs, of Investments in such Person shall be disregarded (except, in computing any Restricted Investment, to the extent that any loss on such Restricted Investment has been recognized in reducing Consolidated Net Income);

(iv) there shall be included all bonds, debentures, notes and accounts receivable from such Person which are not current assets or did not arise from sales to such Person as a customer in the ordinary course of business; and

(v) a guarantee or other contingent liability in respect of any Debt of such Person shall be deemed an Investment equal to the principal amount of the Debt.

Lease shall mean the Lease Agreement dated as of July 13, 1979 between the Company and Columbia & Cowlitz Railway Company, the Lease Agreement dated as of August 14, 1979 between the Company and Chicago, West Pullman and Southern Railroad Company and any other lease agreement substantially in the form attached hereto as Schedule B covering Trust Equipment if (a) such lease agreement permits the Company to terminate the lease agreement if utilization and/or mileage is below a specified minimum, (b) the lesser of (i) the present value of the anticipated rentals under such lease agreement with respect to such Trust Equipment and (ii) the present value of the rentals computed at the specified minimum referred to in clause (a) above under such lease agreement with respect to such Trust Equipment will be at least equal to 117.5% of the present value of the aggregate rentals payable by the Company pursuant to Sections 4.04(c) and 4.04(d) with respect to such Equipment (present values to be determined by employing a 12.875% discount rate and assuming, when in the case of such Equipment described in clause (a) above no mileage minimum is specified, mileage of 60 miles per day) and (c) such lease agreement (i) provides in substantially the terms of the second sentence of Section 7A of the form of lease agreement attached hereto as Schedule B that it is subject to the rights and remedies of the Trustee hereunder,

(ii) provides that any assignment of such lease agreement by the Company to a secured party shall not subject such secured party to any of the Company's obligations thereunder, and that such obligations shall remain enforceable by the lessee thereunder solely against the Company, (iii) contains substantially the terms of (A) the second sentence of Section 4A, (B) the second sentence of Section 13A and (C) Section 13B of the form of lease agreement attached hereto as Schedule B and (iv) has an original term not less than the lesser of 15 years or the remaining maturity of the Trust Certificates.

Lease Assignment shall mean an assignment of a lease authorized pursuant to Section 4.09 hereof to the Trustee in substantially the form annexed hereto as Schedule C executed by the Company.

Lien shall mean any mortgage, pledge, security interest, encumbrance, lien, claim or charge of any kind (including any vendor's interest under any conditional sale or other title retention agreement or lessor's interest under any lease in the nature thereof or under any Capitalized Lease).

Officer's Certificate shall mean a certificate signed by the President or a Vice President of the Company.

Opinion of Counsel shall mean an opinion in writing signed by legal counsel satisfactory to the Trustee and who may be counsel for the Company or an employee of the Company. The acceptance by the Trustee of, together with its action on, an Opinion of Counsel shall be sufficient evidence that such counsel is satisfactory to the Trustee.

Original Purchaser shall mean Connecticut General Life Insurance Company and any Affiliate thereof.

Owner shall mean the manufacturer or the Company or other Person transferring title to any of the Equipment to the Trustee.

Permitted Investments shall mean (a) certificates of deposit of commercial banks or trust companies incorporated under the laws of the United States of America or any state thereof having capital and surplus aggregating not less than \$100,000,000, in each case maturing within one year after the date of investment therein, (b) open market commercial paper rated "Prime-1" or better by Moody's

Investors Service, Inc., or rated "A-1" or better by Standard & Poor's Corporation (or a comparable rating by any successor to either of their businesses), in each case maturing within 270 days after the date of investment therein, (c) bonds, notes or other direct obligations of the United States of America or obligations for which the full faith and credit of the United States of America are pledged to provide for the payment of the interest and principal, in each case maturing within one year after the date of investment therein, and (d) purchases from any commercial bank or trust company referred to in clause (a) above of obligations of the type described in clause (c) above, pursuant to repurchase agreements obligating such bank or trust company to repurchase any such obligation not later than 90 days after the purchase of any such obligation.

Person shall mean and include an individual, a partnership, a joint venture, a corporation, a trust, an estate, an unincorporated organization and a government or any department or agency thereof.

Preferred Stock shall mean, as applied to any corporation, shares of such corporation which shall be entitled to preference or priority over any other shares of such corporation in respect of either the payment of dividends or the distribution of assets upon liquidation, and shall include, as applied to the Company, the 1,000 shares of the Company's 9-1/4% Senior Cumulative Preferred Stock and the 500 shares of the Company's 9-1/4% Junior Cumulative Convertible Preferred Stock outstanding on the date of this Agreement.

Purchase Agreement shall mean the Purchase Agreement dated January 31, 1980 between the Company and the Original Purchaser.

Replacement Funds shall have the meaning specified in Section 8.04.

Request shall mean a written request by the Company for the action therein specified, delivered to the Trustee, dated not more than 10 days prior to the date of delivery to the Trustee and signed by the President or a Vice President of the Company.

Restricted Investment shall mean any Investment in any Person, other than an Investment permitted

by Section 6.05(e)(i) through (iv).

Restricted Junior Payment shall mean (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of the Company now or hereafter outstanding, except a dividend payable solely in shares of stock of the Company; (b) any redemption, retirement, purchase or other acquisition, direct or indirect, of any shares of any class of stock of the Company now or hereafter outstanding, or of any warrants, rights or options to acquire any such shares, except to the extent that the consideration therefor consists of shares of stock of the Company; and (c) any payment, direct or indirect, of or on account of principal or premium of any Subordinated Funded Debt now or hereafter outstanding or any redemption, retirement, purchase or other acquisition, direct or indirect, of any Subordinated Funded Debt (except for any sinking fund, other required prepayment or final payment at maturity pursuant to the provisions thereof and except for any payment consisting solely of shares of stock of the Company or of other Subordinated Funded Debt).

Restricted Subsidiary shall mean any Subsidiary 80% or more of the stock of every class of which, except directors' qualifying shares, shall be owned by the Company either directly or through other Restricted Subsidiaries, and which is either designated as a Restricted Subsidiary in Exhibit F to the Purchase Agreement or which after the date hereof has been designated by the Board as a Restricted Subsidiary by written notice given to the Trustee. The Company shall not designate any Unrestricted Subsidiary as a Restricted Subsidiary within the three years immediately after such Subsidiary has become an Unrestricted Subsidiary and in no event shall make such designation unless after giving effect to such designation (a) the Company and its Restricted Subsidiaries shall be able to incur at least \$1 of additional Senior Funded Debt in compliance with the provisions of Section 6.05(d) and (b) there shall exist no Event of Default or Inchoate Event of Default. The Company shall not designate any Restricted Subsidiary as an Unrestricted Subsidiary within the three years immediately after such Restricted Subsidiary has been designated a Restricted Subsidiary, and in no event shall make such designation unless (x) after giving effect to such designation (i) such Subsidiary shall not own any

capital stock or Debt of any other Restricted Subsidiary and (ii) there shall exist no Event of Default or Inchoate Event of Default, (y) the tangible net worth of such Subsidiary (computed in the same manner as Consolidated Tangible Net Worth) shall not constitute 5% or more of Consolidated Tangible Net Worth and (z) such Subsidiary shall not have produced net income during the immediately preceding fiscal year which is more than 5% of an amount equal to the average of Consolidated Net Income for the immediately preceding three fiscal years of the Company (or any fiscal year if there shall be less than three).

Senior Funded Debt shall mean all Funded Debt except Funded Debt of the Company which is Subordinated Funded Debt.

Short-Term Debt of any Person shall mean all Debt of such Person for borrowed money (including all liability with respect to bankers' acceptances) which by its terms or by the terms of any instrument or agreement relating thereto matures on demand or within one year from the date of the creation thereof and is not directly or indirectly renewable or extendible at the option of such Person to a date one year or more from the date of the creation thereof, provided that Debt for borrowed money outstanding under a revolving credit or similar agreement which obligates the lender or lenders to extend credit over a period of one year or more shall constitute Funded Debt and not Short-Term Debt, even though such Debt by its terms matures on demand or within one year from the date of the creation thereof.

Subordinated Funded Debt shall mean unsecured Funded Debt of the Company which (a) has a final maturity subsequent to February 28, 1995, (b) at the time of the incurrence thereof by the Company has a Weighted Average Life to Maturity which is greater than the remaining Weighted Average Life to Maturity of the Trust Certificates, (c) does not permit all or any part of such Funded Debt to be declared due and payable by any holder thereof before its expressed maturity for any reason other than the occurrence of a default in respect thereof, and (d) is evidenced by promissory notes or is issued pursuant to an indenture or other agreement to which reference shall be made in the promissory notes issued pursuant thereto

containing provisions with respect to subordination substantially as follows:

"The Company covenants and agrees, and the holder of this Note by his acceptance hereof likewise covenants and agrees, as follows:

"(a) the principal of and interest on this Note are and shall be subordinated in right of payment in all respects to all Senior Debt of the Company. The term 'Senior Debt' shall mean all debt of the Company for money borrowed which is not by its terms expressly subordinate and junior in right of payment to any other debt of the Company for money borrowed, and shall include, without limitation, and the 12.875% Equipment Trust Certificates due February 28, 1995 issued pursuant to the Equipment Trust Agreement, dated as of January 1, 1980, between The Connecticut Bank and Trust Company, as Trustee, and the Company;

"(b) without limiting the next preceding subparagraph, (i) no payment on account of principal of, or interest on, this Note shall be made if at the time of such payment, or if immediately after giving effect to such payment, any event or condition exists which constitutes, or which after the giving of notice or the lapse of time or both would constitute, an event of default under the provisions of any Senior Debt or any agreement under which Senior Debt is then outstanding, and (ii) in the event of any insolvency or bankruptcy proceedings, and any receivership, liquidation, reorganization or other similar proceedings in connection therewith, relative to the Company or its property, and in the event of any proceedings for voluntary liquidation, dissolution or other winding up of the Company, whether or not involving insolvency or bankruptcy proceedings, then all principal of, and premium, if any, and interest on, the Senior Debt (including any interest thereon accruing after the commencement of any such proceedings) shall first be paid in full before any payment on account of principal or interest

is made upon this Note, and in any such proceedings any payment or distribution of any kind or character, whether in cash, securities or other property, to which the holder of this Note would be entitled if this Note were not subordinated to the Senior Debt shall be paid by the liquidating trustee or agent or other person making such payment or distribution, or by the holder of this Note if received by such holder, directly to the holders of the Senior Debt to the extent necessary to make payment in full of the Senior Debt remaining unpaid (including any interest thereon accruing after the commencement of any such proceedings), after giving effect to any concurrent payment or distribution to or for the holders of the Senior Debt; subject to the prior payment in full of the Senior Debt, the holder of this Note shall be subrogated to the rights of the holders of the Senior Debt to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Debt until the principal of, and interest on, this Note shall be paid in full, and no such payments or distributions to the holder of this Note of cash, property or securities otherwise distributable in respect of the Senior Debt shall, as between the Company, its creditors other than the holders of the Senior Debt, and the holder of this Note, be deemed to be a payment by the Company on account of this Note;

"(c) in the event that the holder of this Note shall receive any payment on this Note which such holder is not entitled to receive under the provisions of the foregoing subparagraph (b), it will hold any amount so received in trust for the holders of Senior Debt and will forthwith turn over such payment to the holders of Senior Debt in the form received to be applied to the Senior Debt;

"(d) the holders of Senior Debt may, at any time and from time to time, without the consent of or notice to the holder of this Note, without incurring responsibility to the

holder of this Note and without impairing or releasing the obligations of the holder of this Note hereunder to the holders of Senior Debt: (i) change the manner, place or terms of payment or change or extend the time of payment of, or renew or alter any of the Senior Debt (including any change in the rate of interest thereon), or amend in any manner any agreement under which Senior Debt is outstanding; (ii) sell, exchange, release or otherwise deal with any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, any of the Senior Debt; (iii) release anyone liable in any manner for the collection of the Senior Debt; (iv) exercise or refrain from exercising any rights against the Company and others; and (v) apply any sums by whomsoever paid or howsoever realized to the Senior Debt; and

"(e) the foregoing provisions regarding subordination are and are intended solely for the purpose of defining the relative rights of the holders of the Senior Debt on the one hand and the holder of this Note on the other hand; nothing contained in this Note is intended to or shall impair, as between the Company and the holder of this Note, the obligation of the Company, which is unconditional and absolute, to pay to the holder of this Note the principal of, premium, if any, and interest on, this Note as and when the same shall become due in accordance with its terms, subject, however, to the rights under the foregoing subparagraphs of the holders of the Senior Debt."

Subsidiary shall mean any corporation organized under the laws of any state of the United States of America, Canada, or any Province of Canada, which conducts the major portion of its business in the United States of America or Canada, or both, and 80% or more of the stock of every class of which, except directors' qualifying shares, shall be owned by the Company either directly or through Subsidiaries.

Trust Certificates shall mean BRAE Corporation 12.875% Equipment Trust Certificates, First 1980 Series, together with the guaranty of the Company endorsed thereon, issued hereunder.

Trust Equipment shall mean all Equipment at any time subject to the terms of this Agreement.

Trustee shall mean The Connecticut Bank and Trust Company and, subject to the provisions of Article Eight, any successor as trustee hereunder.

Unprotected Unit shall mean each unit of Trust Equipment located in any jurisdiction in Mexico or Canada with respect to which the Trustee has not received an opinion of counsel reasonably satisfactory to it to the effect either (i) that all recordings, registrations or filings necessary or desirable in such jurisdiction to establish, perfect, preserve and protect the rights of the Trustee under this Agreement in and to each unit of the Trust Equipment located in such jurisdiction and each lease permitted by Section 4.09 relating thereto against any and all subsequent purchasers or mortgagees from or under the Company or from creditors of the Company have been made or (ii) that no recording, registration or filing is necessary or desirable in such jurisdiction to establish, perfect, preserve and protect such rights of the Trustee against such purchasers, mortgagees or creditors.

Unrestricted Subsidiary shall mean any Subsidiary that is not designated as a Restricted Subsidiary.

Weighted Average Life to Maturity: as applied to any Debt at any date, the number of years obtained by dividing (a) the then outstanding principal amount of such Debt into (b) the total of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payment, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) which will elapse between such date and the date on which such payment is to be made; as applied to any Preferred Stock at any date, the number of years obtained by dividing (x) the then liquidation value of such Preferred Stock into (y) the total of the products obtained by multiplying (A) the amount of each then remaining installment, sinking fund or other required redemption, including redemption at final

maturity, in respect thereof, by (B) the number of years (calculated to the nearest one-twelfth) which will elapse between such date and the making of such redemption.

Written Direction shall mean a direction or statement in writing by the Original Purchaser which is a Holder of Trust Certificates, signed by an officer of the Original Purchaser and addressed to the Trustee with a copy to the Company, provided that if, at the time a Written Direction is required or authorized by the provisions of this Agreement prior to the taking of any action by the Trustee or the Company, the Original Purchaser is not the Holder of all Trust Certificates, a Written Direction shall mean a direction or statement in writing signed by institutional investors which each hold 3% or more in principal amount of the then outstanding Trust Certificates and which in the aggregate hold more than 50% of the principal amount of Trust Certificates held by all institutional investors which are Holders of 3% or more in principal amount of the Trust Certificates, and provided, further, that any provision of this Agreement requiring or authorizing a Written Direction prior to the taking of any action by the Trustee or the Company shall not be applicable if, at the time thereof, there is no institutional investor which is a Holder of Trust Certificates or if each institutional investor which is a Holder of Trust Certificates holds less than 3% in principal amount of the then outstanding Trust Certificates, in which event such action may be taken by the Trustee or the Company, as the case may be, without reference to the requirement of such Written Direction, and no other direction or authorization shall be required from any other Holder of Trust Certificates unless otherwise specifically required pursuant to this Agreement.

The words herein, hereof, hereby, hereto, hereunder and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

ARTICLE TWO

TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.01. Issuance of Trust Certificates.
The Trustee shall, as the Company shall direct by Request,

issue and deliver Trust Certificates in the aggregate principal amount sold pursuant to the Purchase Agreement. The net proceeds of the sale of such Trust Certificates (which proceeds, as provided in the Purchase Agreement, may be less than the aggregate principal amount of such Trust Certificates) shall, forthwith upon the issuance thereof, be deposited in cash with the Trustee.

Subject to the provisions of Sections 2.06 and 2.07 of this Agreement, the aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee under this Section shall not exceed the sum of \$10,000,000.

Each Trust Certificate issued under this Section 2.01 shall be dated the date on which the same shall be executed and delivered by the Trustee and each Trust Certificate issued in exchange or substitution for, or upon the transfer of, the whole or any part of one or more Trust Certificates shall be dated the date to which interest has been paid on such other Trust Certificate or Trust Certificates, provided that each Trust Certificate so issued prior to the first interest payment with respect to such other Trust Certificate or Trust Certificates shall be dated the date of such other Trust Certificate or Trust Certificates. Trust Certificates shall bear interest from their respective dates.

SECTION 2.02. Interests Represented by Trust Certificates; Interest; Maturity. Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust hereunder. The principal amount of each Trust Certificate originally issued hereunder will be payable in 60 consecutive quarterly installments, each such quarterly installment being in an amount equal to the amount obtained by subtracting the interest due on such Trust Certificate on the date of payment from 3.784298% of the original principal amount thereof, on the last day of February, May, August and November in each year, commencing May 31, 1980 and ending February 28, 1995, both inclusive, except to the extent that prepayments are applied to the prepayment of installments as provided in Section 2.03(d) (the final installment being in any event in an amount equal to the remaining principal amount owing on such Trust Certificate). In the event that any Trust Certificate originally issued hereunder is divided into more than one Trust Certificate

pursuant to Section 2.06, the original principal amount of such originally issued Trust Certificate shall be proportionately divided among such subsequently issued Trust Certificates and shall be deemed to be the original principal amount of such subsequently issued Trust Certificates. Similarly, upon the division of any such subsequently issued Trust Certificate, the proportion of the original principal amount of the Trust Certificate originally issued hereunder which was allotted to such subsequently issued Trust Certificate pursuant to the next preceding sentence shall likewise be proportionately divided among the Trust Certificates issued in exchange therefor and shall be deemed to be the original principal amount of such Trust Certificates. Each Trust Certificate will bear interest on the unpaid principal amount thereof, payable on the last day of February, May, August and November in each year, commencing on the first such date occurring after the date of issue thereof (provided that any interest payable hereunder within 30 days after the original issuance thereof shall be carried over to the next date interest is payable hereunder), at the rate of 12.875% per annum, with interest payable in each case on any overdue principal and premium (if any) and, to the extent permitted by applicable law, on any overdue interest, at the rate of 13.875% per annum. Interest on Trust Certificates shall be calculated on the basis of a 360-day year of twelve 30-day months. Promptly following the issuance of any Trust Certificate hereunder, the Trustee shall provide to the Holder thereof a schedule of the principal and interest payments to be made on such Trust Certificate. The Trust Certificates are originally issuable in denominations of at least \$25,000.

The principal of and premium (if any) and interest on the Trust Certificates shall be payable at the Corporate Trust Office in immediately available funds in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions hereof. Notwithstanding the provisions of the preceding sentence or similar provisions in the Trust Certificates, the Trustee shall comply with section 11 of the Purchase Agreement in making such payments.

SECTION 2.03. Prepayments. (a) Prepayments Without Premium. (i) The Trust Certificates are subject to prepayment, in each case without premium, as provided in Sections 3.04 and 4.08.

(ii) The Trust Certificates are subject to prepayment, at the option of the Company, without premium, on each date on which one of the installment payments of principal is to be made pursuant to the provisions of Section 2.02 in amounts not exceeding the amount of the installment payment of principal to be made on such date, such option to be noncumulative, provided that the aggregate principal amount of all Trust Certificates which may be prepaid pursuant to this paragraph (ii) shall not exceed 25% of an amount which is (A) the aggregate principal amount of the Trust Certificates which are originally issued hereunder less (B) the aggregate principal amount of the Trust Certificates which have been prepaid pursuant to Section 3.04.

(b) Optional Prepayments With Premium. The Trust Certificates are subject to prepayment, at the option of the Company, in whole or from time to time in part (in multiples of \$1,000), on any interest payment date at 112.875% of the principal amount so prepaid if prepaid on or before February 28, 1981, and thereafter at the following applicable percentage of the principal amount so prepaid (depending on the 12 months' period during which such prepayment occurs):

<u>Period Ending on Last Day of February</u>	<u>Percentage</u>	<u>Period Ending on Last Day of February</u>	<u>Percentage</u>
1982	111.955%	1989	105.518%
1983	111.036	1990	104.599
1984	110.116	1991	103.679
1985	109.197	1992	102.759
1986	108.277	1993	101.840
1987	107.357	1994	100.920
1988	106.438	1995	100

; provided that the Company may not prepay the Trust Certificates pursuant to this Section 2.03(b) unless (i) in the case of any such prepayment of the Trust Certificates on or before February 28, 1990, such prepayment is not being made from or in anticipation of the proceeds (or any part of the proceeds) of any (A) indebtedness for borrowed money directly or indirectly incurred or to be incurred by the Company either (1) having an interest rate or an interest cost to the Company (computed in accordance with accepted financial practice) of less than 12.875% per

annum, or (2) evidenced by obligations having a maturity date earlier than the maturity date of the Trust Certificates or a Weighted Average Life to Maturity shorter than the remaining Weighted Average Life to Maturity of the Trust Certificates, or (3) subject to payment, redemption or other retirement by means of any installment, sinking fund, serial maturity or other required payments at a rate greater than the rate at which the outstanding Trust Certificates shall be payable as provided herein and in the Trust Certificates, or (B) Preferred Stock issued or to be issued by the Company either (1) having a dividend rate (expressed as a percentage of original liquidation value and computed in accordance with accepted financial practice) which, after being divided by a fraction the numerator of which is Consolidated Net Income during the period commencing April 1, 1979, and ending on the last day of the fiscal month next preceding the date of issuance of such Preferred Stock and the denominator of which is such Consolidated Net Income before the provision for income taxes for such period, is less than 12.875% per annum or (2) having a final mandatory redemption date earlier than the maturity date of the Trust Certificates or a Weighted Average Life to Maturity shorter than the remaining Weighted Average Life to Maturity of the Trust Certificates, or (3) subject to payment, redemption or other retirement by means of any installment, sinking fund, serial maturity or other required payments at a rate greater than the rate at which the outstanding Trust Certificates shall be payable as provided herein and in the Trust Certificates, (ii) such prepayment will not reduce Consolidated Working Capital below an amount which is considered adequate by the officers of the Company for the safe conduct of the business of the Company and its Subsidiaries without the necessity of creating additional Funded Debt or Short-Term Debt or issuing additional Preferred Stock to replace funds used to make such prepayment and (iii) the Company shall have delivered to the Trustee an Officer's Certificate to all such effects, at least 30 days prior to the date of such prepayment.

(c) Notice of Prepayment. In case the Company shall desire to prepay all or any part of the Trust Certificates, it shall give written notice of such prepayment to the Trustee and to the Holders of the Trust Certificates, not less than 30 days nor more than 60 days prior to the prepayment date, specifying such prepayment date, the principal amount of the Trust Certificates to be prepaid on

such date and the Section pursuant to which such prepayment is to be made, whereupon the principal amount of the Trust Certificates specified in such notice, together with the premium (if any) herein provided and the interest accrued to such prepayment date, shall become due and payable on such prepayment date, and such notice shall be accompanied by an Officer's Certificate as to the compliance by the Company with the applicable provisions of Section 2.03.

(d) Application of Prepayment. Each prepayment under Section 2.03(a) or (b) shall be applied to the prepayment of the installments of principal of the Trust Certificates so that each installment due and payable under each such Trust Certificate after such prepayment shall be reduced in the same proportion as the then outstanding principal amount of such Trust Certificate shall have been reduced by such prepayment. All prepayments hereunder are to be made pro rata on each outstanding Trust Certificate. In the event of any partial prepayment of the Trust Certificates pursuant to this Section 2.03, the Company within 60 days after such prepayment shall prepare and deliver to the Trustee and each Holder of a Trust Certificate a recomputed schedule of the principal and interest payments to be made thereafter on the Trust Certificates.

(e) Deposit of Funds. In any case where notice of prepayment shall have been given, the Company will on or before the prepayment date deposit or cause to be deposited with the Trustee an amount of cash sufficient to effect the prepayment of the Trust Certificates specified in such notice, or it may direct the Trustee to apply for such purpose, to the extent that they are available, any moneys held by the Trustee which may be applied to the prepayment of Trust Certificates pursuant to Sections 3.04 and 4.08. The Trustee shall apply any funds deposited pursuant to this Section 2.03(e) as provided in Section 2.03(d).

(f) Transfer of Title. Upon any prepayment of the Trust Certificates pursuant to Section 2.03(a)(ii) or 2.03(b), and the payment to the Trustee of all amounts owed to it in accordance with the terms hereof, the Trustee (i) shall execute and deliver a bill of sale assigning and transferring to the transferee named by the Company all the right, title and interest of the Trustee in and to units of Trust Equipment having an aggregate Cost which bears

the same ratio to the aggregate Cost of all Trust Equipment then subject to this Agreement as the aggregate principal amount of the Trust Certificates being prepaid bears to the aggregate principal amount of all Trust Certificates outstanding immediately prior to such prepayment and (ii) shall assign to the Company all of the right, title and interest of the Trustee in and to the lease or leases permitted by Section 4.09 relating to the units of Trust Equipment being so assigned and transferred, but only to the extent such leases apply to such units of Trust Equipment. The Company may select the units of Trust Equipment so to be assigned and transferred and the lease or leases permitted by Section 4.09 relating thereto, which selection shall be subject to the receipt of a Written Direction approving the same, provided that, if at the time of such repayment a Written Direction shall, in accordance with the definition thereof, not be required, the units of Trust Equipment shall be assigned and transferred to the extent possible in consecutive order of the identification numbers required to be placed on the units of Trust Equipment pursuant to Section 4.07, commencing with the identification number chosen by the Trustee, which number shall be chosen in a manner, if possible, to insure that the units as assigned and transferred are leased by the Company under only one of the leases permitted by Section 4.09.

(g) Purchase Prohibition. The Company will not, and will not permit any Subsidiary to, acquire directly or indirectly, by purchase or prepayment or otherwise, any of the outstanding Trust Certificates or any part thereof except by way of payment or prepayment by the Company in accordance with the provisions of the Trust Certificates and of this Agreement or by way of a pro rata offer to all the Holders of Trust Certificates.

SECTION 2.04. Forms of Trust Certificates and Guaranty. The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company as provided in Section 6.01 shall be in substantially the forms hereinbefore set forth, and each Trust Certificate shall be either a registered or an order Trust Certificate.

SECTION 2.05. Execution by Trustee. The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual signature of one of its duly authorized officers.

SECTION 2.06. Transfer and Exchange. The Trustee shall cause to be kept at its Corporate Trust Office books for the registration and transfer of registered Trust Certificates. The names and addresses of the Holders of registered Trust Certificates, the transfer thereof and the names and addresses of the transferees of registered Trust Certificates shall be registered in the register. The transfer of each registered Trust Certificate shall be registrable by the registered Holder thereof in person or by duly authorized attorney on the books of the Trustee upon surrender to the Trustee at its Corporate Trust Office of such Trust Certificate accompanied by a written instrument of transfer, duly executed by such registered Holder in person or by such attorney. Thereupon the Trustee will execute and deliver to the transferee thereof in exchange therefor, without expense to the transferor or transferee except as provided in the last paragraph of this Section 2.06, a new registered Trust Certificate or Certificates in any denomination of \$25,000 or more (or the aggregate unpaid principal amount of all registered Trust Certificates being surrendered by such Holder, whichever is less), plus, if applicable, one registered Trust Certificate in a smaller denomination, for the same aggregate principal amount as the unpaid principal amount of the registered Trust Certificate so surrendered. Any Trust Certificate which is an order Trust Certificate shall be transferable by endorsement and delivery.

The Holder of any Trust Certificate may surrender the same for exchange at said Corporate Trust Office of the Trustee and shall be entitled to receive in exchange therefor, without expense to such Holder except as provided in the last paragraph of this Section 2.06, a like aggregate principal amount of a new Trust Certificate or Certificates of any denomination of \$25,000 or more (or the aggregate unpaid principal amount of all Trust Certificates being surrendered by such Holder, whichever is less), plus, if applicable, one Trust Certificate in a smaller denomination. Each such new Trust Certificate shall, at the option of such Holder, be either a registered Trust Certificate or an order Trust Certificate, registered in the name of or made payable to such person as such Holder may request.

The Trustee shall not be required to transfer or exchange any Trust Certificate during the five Business Days preceding the due date of any payment on such Trust Certificate.

Prior to the due presentment for registration of transfer of any registered Trust Certificate, the parties hereto may deem and treat the registered Holder of any registered Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary, unless otherwise required by law.

All Trust Certificates issued upon any transfer or exchange of Trust Certificates shall be the valid obligations of the Trustee evidencing the same respective obligations, and entitled to the same security and benefits under this Agreement, as the Trust Certificates surrendered upon such transfer or exchange, and the Company shall endorse its guaranty on such new Trust Certificates. Each new Trust Certificate shall be dated as provided in the last paragraph of Section 2.01 so that there will be no loss of interest on the old Trust Certificate or Certificates with respect to which such new Trust Certificate or Certificates are issued. The Trustee shall, if any payment or prepayment shall theretofore have been made pursuant to Section 2.03, endorse on each Trust Certificate issued upon transfer or exchange a notation thereon as to the fact that the installments of principal thereon will be payable as set forth in such notation.

For any such transfer or exchange the Trustee may require the payment by the transferor or the transferee of a sum sufficient to cover the amount of any stamp tax or other governmental charge connected therewith.

SECTION 2.07. Loss, etc., of Trust Certificates. If any Trust Certificate shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee, upon the written request of the Holder thereof, shall execute and deliver to such Holder a new Trust Certificate of like tenor, dated as provided in the last paragraph of Section 2.01 so that there will be no loss of interest, in a principal amount equal to the unpaid principal amount of the mutilated, defaced, lost, stolen or destroyed Trust Certificate, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, stolen or destroyed. The Company shall execute its guaranty on any Trust Certificate so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, theft or destruction of such Trust Certificate alleged to have

been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate, and also such security and indemnity as may be required by the Trustee and by the Company, in their discretion, provided that the written undertaking of the Original Purchaser or of any transferee thereof which is an institutional investor shall be sufficient security and indemnity, and shall pay all expenses and charges of such substitution or exchange.

ARTICLE THREE

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 3.01. Acquisition of Equipment by Trustee. The Company shall sell, assign and transfer or cause to be sold, assigned and transferred to the Trustee, as trustee for the Holders of the Trust Certificates, the Equipment described in Schedule A hereto, as supplemented; all of which the Company represents was new Equipment fit for its designated purpose when first put into service, was first put into service not earlier than January 1, 1980, and has an estimated useful life beyond February 28, 1995. Such Equipment shall be delivered to the Person or Persons designated by the Trustee as its agent or agents to receive such delivery (and, in the case of such Equipment, the Trustee hereby designates the officers or agents of the Company) and the certificate of any such agent or agents as to such delivery shall be conclusive evidence of such delivery.

In the event that (a) the Company shall deem it necessary or desirable (except for the reason specified in clause (b) of this paragraph) to procure for the use of the Company, and to include in the trust hereby created, other Equipment in lieu of any units of the Equipment described in Schedule A hereto prior to the acceptance of such Equipment by the Trustee, (b) any unit of the Equipment (hereinafter in this paragraph called the "Casualty Equipment") described in Schedule A hereto, as supplemented, shall suffer a Casualty Occurrence before Deposited Cash is paid by the Trustee with respect thereto pursuant to Sections 3.02 and 3.03, or (c) the Company shall deem it necessary or desirable to include in the trust hereby created additional Equipment in order to utilize all the Deposited Cash, the Company may, subject to the receipt by the Trustee of a Written Direction consenting thereto, sell

or cause to be sold to the Trustee such other Equipment first put into service not earlier than January 1, 1980 and having an estimated useful life beyond February 28, 1995, to be substituted under the trust, provided that receipt of such a Written Direction shall not be required if (i) such other Equipment (hereinafter in this paragraph called the "Replacing Equipment") is being substituted or added pursuant to clause (b) above and is of the same type as the Casualty Equipment for which it is being replaced and is in as good condition as such Casualty Equipment was immediately prior to such Casualty Occurrence, (ii) the Replacing Equipment has been leased by the Company to any lessee listed on Schedule A hereto, and (iii) the Company shall have furnished to the Trustee and the Original Purchaser an Officer's Certificate to the foregoing effects.

SECTION 3.02. Payment of Deposited Cash.

From time to time, when and as any Equipment shall have been accepted by the Trustee pursuant to Sections 3.01 and 3.03(a), the Trustee shall pay to the Company out of Deposited Cash, upon Request but subject to the provisions of Section 3.03, an amount equal to not more than the sum of 80% of the Cost of such Equipment, as such Cost is specified in the Officer's Certificate furnished to the Trustee pursuant to Section 3.03(c).

SECTION 3.03. Supporting Papers. The Trustee shall not pay out any Deposited Cash for the purchase of any unit of Equipment unless and until it shall have received:

(a) a certificate of the agent or agents designated by the Trustee to receive delivery of such units of Equipment, dated the date such unit was delivered to such agent or agents, stating that such unit, specified by register number, has been delivered to such agent or agents; and the execution of such certificate by such agent or agents shall constitute acceptance by the Trustee hereunder of such unit of Equipment as Trust Equipment;

(b) a bill of sale covering such unit of Equipment from the Owner to the Trustee, which bill of sale shall specify such unit of Equipment described therein by a number or numbers and shall contain a warranty or guaranty to the Trustee that the title of such unit of Equipment, at the time of delivery thereof to the Trustee, was free from (i) if the Owner is the Company, all Liens, except for those permitted by Sections

6.05(c)(i), (ii) and (iii), for the rights of the Company under this Agreement and for the rights of any lessees under the leases permitted by Section 4.09, or (ii) if the Owner is not the Company, all Liens arising from acts of or claims against such Owner;

(c) an Officer's Certificate, which shall state (i) that such unit of Equipment (identifying the builder thereof) is Equipment as herein defined, has been marked in accordance with Section 4.07 and was not put into service prior to the date specified therein, (ii) that such unit is free from all Liens (except for Liens permitted by Sections 6.05(c)(i), (ii) and (iii), for the rights of the Company under this Agreement and for the rights of any lessees under the leases permitted by Section 4.09), (iii) that the Cost of such unit of Equipment is an amount therein specified or is not less than an amount therein specified and that the Company has paid or is simultaneously paying to the Owner the amount by which such Cost exceeds the Deposited Cash to be paid by the Trustee with respect to such unit pursuant to Section 3.02, (iv) that the insurance referred to in Section 4.10 is in full force and effect for such unit, (v) that such unit is subject to one of the leases described in Schedule A hereto, as such Schedule may, subject to approval thereof contained in a Written Direction if required, have been supplemented by the Company, (vi) that, in the opinion of the signers, all conditions precedent provided for in this Trust Agreement, relating to the payment of Deposited Cash in question, have been complied with, that since March 31, 1979, there has been no change in the assets, liabilities or financial condition of the Company or any of its Subsidiaries, other than changes in the ordinary course of business which have not been, either in any case or in the aggregate, materially adverse to the Company or such Subsidiary and neither the business, operations or affairs nor any of the properties or assets of the Company or any of its Subsidiaries have been affected by any occurrence or development (whether or not insured against) which has been, either in any case or in the aggregate, materially adverse to the Company or such Subsidiary, and (vii) that there exists no Event of Default or Inchoate Event of Default hereunder;

(d) an invoice from the Owner of such unit of Equipment, which, if the Owner is not the Company, shall have endorsed thereon a certification by the

Company as to the correctness of the price stated therein;

(e) an Opinion of Counsel for the Owner to the effect that such bill of sale is valid and effective, either alone or in connection with any other instrument referred to in and accompanying such opinion, to vest in the Trustee title to such unit of Equipment free from all Liens arising out of acts of or claims against the Owner;

(f) whether the Owner is or is not the Company, an Opinion of Counsel for the Company to the effect that (i) this Agreement and the Lease Assignment relating to the lease covering such unit have been duly authorized, executed and delivered by the Company and constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, moratorium, reorganization and other similar laws of general application which may affect the enforcement of creditors' rights generally and except, in the case of this Agreement, as such enforceability may be limited by applicable laws which may affect the remedies provided herein, which laws, however, do not, in the opinion of such counsel, affect the validity of this Agreement or make the remedies provided herein inadequate for the realization by the Trustee of the benefits and security provided hereby, (ii) the Trustee is vested with title to such unit of Equipment free from all Liens, except for Liens permitted by Sections 6.05(c)(i), (ii) and (iii), for the rights of the Company under this Agreement and for the rights of any lessees under the leases permitted by Section 4.09, (iii) this Agreement creates a valid security interest in favor of the Trustee in such unit of Equipment, and (iv) this Agreement, together with the Lease Assignment relating to the lease covering such unit, constitute a valid assignment to the Trustee, for the purpose of security, of all of the Company's right, title and interest in and to such lease;

(g) an opinion of Interstate Commerce Commission counsel satisfactory to the Trustee to the effect that (i) this Agreement, the lease covering such unit, and the Lease Assignment relating to such lease have been

duly filed with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303, and no further filing or recordation is necessary to establish, perfect, preserve and protect in the United States the rights of the Trustee and the Holders of the Trust Certificates in and to such unit and such lease, and (ii) such counsel has searched the register maintained pursuant to 49 U.S.C. § 11303 and has found no record of any interest in or Lien against such unit or such lease which would rank prior to or equal with the rights of the Trustee under this Agreement to such unit and such lease;

(h) in the case of any such unit of Trust Equipment which is leased by the Company under a lease which presently or may in the future relate both to Trust Equipment and to railroad equipment which is not Trust Equipment, an acknowledgment from the lessee party to the lease under which such unit of Trust Equipment is leased by the Company acknowledging that the Company has sold (or caused to be sold) such unit of Trust Equipment to the Trustee and consenting and acknowledging that the right, title and interest of the Company under such lease relating to such unit of Trust Equipment have been assigned to the Trustee and confirming that any assignment of any of the right, title and interest of the Company under such lease, to the extent that they relate to railroad equipment which is not Trust Equipment, shall not impair or offset the obligation to pay to the Trustee all rentals under such lease in respect of such unit of Trust Equipment as provided in Section 4.09 and a consent of such lessee to the effect that the right, title and interest of the Company under such lease, to the extent they relate to railroad equipment which is not Trust Equipment, may either be retained by the Company or assigned to others, provided that such acknowledgement shall not be required if such lease by its terms provides substantially to the effect set forth in this Section 3.03(h);

(i) unless such unit of Equipment shall have been described by register number in Schedule A, as theretofore supplemented or amended, an amendment or supplement to Schedule A which describes such unit of Equipment by number; and

(j) the original of the lease under which such unit of Equipment has been or is to be leased by the

Company (or, if such lease relates both to Trust Equipment and to railroad equipment which is not Trust Equipment and as a result thereof the original of such lease is at the time held by another creditor of the Company, a copy of such lease stamped by the Interstate Commerce Commission as being filed), together with a Lease Assignment with respect to such lease and a supplement or schedule thereto specifically describing such unit of Equipment by register number, unless such lease, Lease Assignment and supplement or schedule shall previously have been delivered to the Trustee.

SECTION 3.04. Prepayment from Deposited Cash.

In the event that all of the Equipment described in Schedule A hereto (and any other or additional Equipment as provided in the second paragraph of Section 3.01) shall have been accepted by the Trustee pursuant to Sections 3.01 and 3.03(a), payment shall have been made therefor pursuant to Section 3.02 and there shall remain on deposit with the Trustee a portion of the proceeds of the sale of the Trust Certificates, the Trustee, on September 30, 1980, shall apply all of such remaining proceeds to the prepayment of the installments of principal of the Trust Certificates pursuant to Section 2.03(a)(i), such prepayment to be applied as provided in Section 2.03(d) and to be made pro rata on each outstanding Trust Certificate. The Company will pay to the Trustee accrued interest to be paid by the Trustee in respect of the portion of the Trust Certificates to be prepaid hereunder, it being the intention that accrued interest shall not be charged against Deposited Cash applied toward the prepayment of Trust Certificates pursuant to this Section 3.04.

ARTICLE FOUR

LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 4.01. Lease of Trust Equipment. The Trustee does hereby let and lease to the Company all of the Trust Equipment, for a term commencing on the date such Equipment is accepted by the Trustee pursuant to Sections 3.01 and 3.03(a) and ending February 28, 1995.

SECTION 4.02. Equipment Automatically Subjected. As and when any Equipment shall from time to time be accept-

ed hereunder by the Trustee or its agent or agents, the same shall, without further instrument of lease or transfer (but without limiting the requirements of Section 4.03), pass under and become subject to all the terms and provisions hereof.

SECTION 4.03. Additional and Substituted Equipment Subjected Hereto. In the event that the Company shall, as provided in Section 3.01 or 4.06, sell or transfer to the Trustee other Equipment in addition to or in substitution for any of the Equipment herein specifically described or subjected hereto, such other Equipment shall be included as part of the Trust Equipment by supplement hereto to be executed by the Trustee and the Company and to be filed with the Interstate Commerce Commission in accordance with all applicable requirements. Such Equipment shall be subject to all the terms and conditions hereof in all respects as though it had originally been part of the Equipment herein specifically described.

SECTION 4.04. Rental Payments. The Company hereby accepts the lease of all the Trust Equipment, and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment; and the Company covenants and agrees to pay to the Trustee at the Corporate Trust Office (or, in the case of taxes, to the proper taxing authority), in immediately available funds in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rent hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment):

(a) from time to time upon demand of the Trustee, (i) the necessary and reasonable expenses of the trust hereby created, including compensation and expenses provided for herein, and (ii) an amount equal to any expenses incurred or loss of principal (including interest accrued thereupon at time of purchase) in connection with any purchase, sale or redemption by the Trustee of Permitted Investments;

(b) from time to time upon demand of the Trustee, any and all taxes, assessments and governmental

charges upon or on account of the income or property of the Trust, or upon or on account of this Agreement, which the Trustee as such may be required to pay;

(c) (i) the amounts of the interest payable on each Trust Certificate, when and as the same shall become due and payable, and (ii) interest at the rate of 13.875% per annum from the due date upon the amount of any installments of rental payable under this subdivision (c) and the following subdivision (d) which shall not be paid when due, to the extent permitted by applicable law; and

(d) the principal of each Trust Certificate, when and as the same shall become due and payable (whether upon the date of maturity thereof, including any date established for the payment of any installment of principal, or at a date fixed for a prepayment or by declaration or otherwise).

Nothing contained herein or in the Trust Certificates shall be deemed to impose on the Trustee or on the Company, except as provided in subdivision (b) of the first paragraph of this Section 4.04, any obligation to pay to the Holder of any Trust Certificate any income or franchise tax, required by any present or future law of the United States of America or of any state, county, municipality or other taxing authority thereof, to be paid in behalf of, or withheld from the amount payable to, the Holder of any Trust Certificate except any such tax which is in substitution for or relieves the Company from the payment of taxes which it would otherwise be obligated to pay or indemnify for as herein provided or is imposed by reason of activities of the Company.

The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, provided that the rights or interests of the Trustee or of the Holders of the Trust Certificates will not be materially endangered thereby and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect.

SECTION 4.05. Termination of Lease. At the termination of the lease provided for herein and after all payments due or to become due from the Company hereunder shall have been completed and fully made to and received by

the Trustee, (a) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (b) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (c) title to all the Trust Equipment shall vest in the Company and (d) the Trustee shall execute for recording in public offices, at the expense of the Company, such instrument or instruments as reasonably shall be requested by the Company in order to make clear upon public records the Company's title to all the Trust Equipment and to the leases permitted by Section 4.09 related thereto under the laws of any jurisdiction, provided that until that time title to the Trust Equipment shall not pass to or vest in the Company but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company pursuant to this Agreement.

SECTION 4.06. Replacement of Trust Equipment.

(a) Subject to the receipt by the Trustee of a Written Direction and of the documents and instruments described in Section 4.06(b), cash deposited with the Trustee pursuant to Section 4.08(c) with respect to a unit or units of Equipment having suffered a Casualty Occurrence (hereinafter in this Section 4.06 called the "Casualty Equipment") may, from time to time, so long as no Event of Default or Inchoate Event of Default shall have occurred and be continuing, be paid over by the Trustee to the Company upon Request against conveyance to the Trustee of a unit or units of Equipment (hereinafter in this Section 4.06 called the "Replacing Equipment") described in such Request first put into service on or after January 1, 1980, having an AAR Value, as of the date of such Request, not less than the AAR Value that the unit or units of the Casualty Equipment with respect to which such cash was deposited would have had as of the date of such Request had such unit or units not suffered a Casualty Occurrence and having an estimated useful life beyond February 28, 1995, provided that receipt of a Written Direction shall not be required if (i) the Replacing Equipment is of the same type as the Casualty Equipment for which it is being replaced and is in as good condition as such Casualty Equipment was immediately prior to such Casualty Occurrence, (ii) the Replacing Equipment has been leased by the Company to any lessee listed on Schedule A hereto, and (iii) the Company shall have furnished to the Trustee and the Original Purchaser (so long

as it is a Holder of Trust Certificates) an Officer's Certificate to the foregoing effects.

(b) At the time of delivery of any Request pursuant to Section 4.06(a), the Company shall deliver to the Trustee the following papers:

(i) an Officer's Certificate certifying (A) the AAR Value that the Casualty Equipment for which the Replacing Equipment is being substituted would have had as of the date of such Request had such Casualty Equipment not suffered a Casualty Occurrence, (B) the AAR Value, as of the date of such Request, of the Replacing Equipment being substituted for such Casualty Equipment and the date such Replacing Equipment was first put into service (or that such Replacing Equipment was first put into service not earlier than a specified date), (C) that each unit of such Replacing Equipment is Equipment as herein defined and is marked in accordance with the provisions of Section 4.07, (D) that each such unit is free from all Liens (except for Liens permitted by Sections 6.05(c)(i), (ii) and (iii), for the rights of the Company under this Agreement and for the rights of any lessees under the leases permitted by Section 4.09), (E) that each such unit has an estimated useful life beyond February 28, 1995, (F) that the insurance referred to in Section 4.10 is in full force and effect for each such unit, and (G) that no Event of Default or Inchoate Event of Default hereunder has occurred and is continuing;

(ii) a bill or bills of sale and an invoice or invoices from the Owner in respect of such Replacing Equipment as provided for in Sections 3.03(b) and (d) (acceptance of such bill or bills of sale by the Trustee to constitute acceptance by the Trustee hereunder of such Equipment);

(iii) an Opinion of Counsel of the Company to the effect that (A) such bill or bills of sale are valid and effective, either alone or together with any other instruments referred to in and accompanying such opinion, to vest in the Trustee title to such Replacing Equipment free from Liens (except for Liens permitted by Sections 6.05(c)(i), (ii) and (iii), for the rights of the Company hereunder and for the rights of any lessees under the leases permitted by Section 4.09), (B) a proper supplement hereto in respect of each unit of Replacing Equipment has been duly authorized, executed and delivered by the parties thereto, (C) this Agreement, as

so supplemented, creates a valid security interest in favor of the Trustee in each such unit of Replacing Equipment and (D) this Agreement, together with the Lease Assignments relating to the leases covering such units of Replacing Equipment, constitute a valid assignment to the Trustee, for the purpose of security, of all of the Company's right, title and interest in and to such such leases;

(iv) an opinion of Interstate Commerce Commission counsel satisfactory to the Trustee to the effect that (A) the supplement hereto referred to in clause (B) of Section 4.06(b)(iii), the leases covering such units of Replacing Equipment and the Lease Assignments relating to such leases have been duly filed with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303, and no further filing or recordation is necessary to establish, perfect, preserve and protect in the United States the rights of the Trustee and the Holders of the Trust Certificates in and to each such unit and each such lease, and (B) such counsel has searched the register maintained pursuant to 49 U.S.C. § 11303 and has found no record of any interest in or Lien against any such unit or lease which would rank prior to or equal with the rights of the Trustee under this Agreement to each such unit and lease;

(v) in the case of any such unit of Replacing Equipment which is leased by the Company under a lease which presently or may in the future relate both to Trust Equipment and to railroad equipment which is not Trust Equipment, an acknowledgment from the lessee party to the lease under which such unit of Replacing Equipment is leased by the Company acknowledging that the Company has sold (or caused to be sold) such unit of Replacing Equipment to the Trustee and consenting and acknowledging that the right, title and interest of the Company under such lease relating to such unit of Replacing Equipment have been assigned to the Trustee and confirming that any assignment of any of the right, title and interest of the Company under such lease, to the extent they relate to railroad equipment which is not Trust Equipment, shall not impair or offset the obligation to pay to the Trustee all rentals under such lease in respect of such unit of Replacing Equipment as provided in Section 4.09 and a consent of such

lessee to the effect that the right, title and interest of the Company under such lease, to the extent they relate to railroad equipment which is not Trust Equipment, may either be retained by the Company or assigned to others, provided that such acknowledgement shall not be required if such lease by its terms provides substantially to the effect set forth in this Section 4.06(b)(iv);

(v) an amendment or supplement to Schedule A which describes such unit of Replacing Equipment by register number; and

(vi) the original of the lease under which such unit of Replacing Equipment has been or is to be leased by the Company (or, if such lease relates both to Trust Equipment and to railroad equipment which is not Trust Equipment and as a result thereof the original of such lease is at the time held by another creditor of the Company, a copy of such lease stamped by the Interstate Commerce Commission as being filed), together with a Lease Assignment with respect to such lease and a supplement or schedule thereto specifically describing such unit of Equipment by register number, unless such lease, Lease Assignment and supplement or schedule shall previously have been delivered to the Trustee.

SECTION 4.07. Marking of Trust Equipment.

The Company agrees that each unit of the Trust Equipment shall be kept numbered with the appropriate identifying number as set forth in Schedule A hereto or a supplement thereof and that there shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of such unit a metal plate bearing the following words, or that such words shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION

or other appropriate words designated by the Trustee in order to protect its interest in such unit and its rights under this Agreement.

In case, prior to the termination of the lease provided for herein, any of such plates or marks shall at any time be removed, defaced or destroyed, the Company shall forthwith cause the same to be restored or replaced. The Company shall not change or permit to be changed the numbers of any of the Trust Equipment (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor, which statement shall previously have been filed with the Trustee by the Company and which shall be filed and recorded to the extent required by this Agreement.

The Trust Equipment may be marked or lettered in an appropriate manner for convenience of identification of the leasehold interest of the Company therein (i.e., the Trust Equipment may be lettered "Leased from BRAE"), and may also be marked or lettered, in case of any leases permitted by Section 4.09, in such manner as may be appropriate for convenience of identification of such leasehold interest therein; but the Company, during the continuance of the lease provided for herein, will not allow any lettering or designation to be placed on any of the Trust Equipment as a designation which might be interpreted as a disclaimer of the right, title and interest of the Trustee in and to the Trust Equipment.

SECTION 4.08. Maintenance of Trust Equipment; Unprotected Units; Casualty Occurrences. (a) The Company will maintain or cause to be maintained and will keep or cause to be kept each unit of the Trust Equipment in good order and proper repair and in compliance with all applicable standards of the Association of American Railroads and of the United States Department of Transportation and all other applicable laws and regulations at no cost and expense to the Trustee, unless and until such unit becomes worn out, unsuitable for use, lost beyond hope of recovery, destroyed or damaged beyond economical repair, taken or requisitioned (unless any such unit is requisitioned for use and such requisition does not exceed a period of 180 days) by condemnation or otherwise or becomes economically obsolete due to substantial, adverse amendments to presently existing car-hire regulations of the Interstate Commerce Commission (any of the above such events being hereinafter called a "Casualty Occurrence"). For purposes of this paragraph, the term "unsuitable for use" shall include any condition in which a unit of the Trust Equipment is no longer usable for the purpose or purposes

for which the same was designed (or an alternate purpose or alternate purposes provided that no material impairment in value shall arise therefrom), whether by virtue of its physical condition or of the effect of any applicable law, rule, regulation or order.

(b) In the event that units of Trust Equipment having an aggregate Cost in excess of 10% of the aggregate Cost of all units of Trust Equipment then subject to this Agreement shall become Unprotected Units, the Company shall, promptly after it shall have knowledge of such event, notify the Trustee and the Holders of the Trust Certificates of such event, specifying the register numbers of all Unprotected Units known to the Company on the date of such report, the aggregate Cost of such Unprotected Units and the aggregate Cost of all units of Trust Equipment then subject to this Agreement. The Company shall within 30 days thereafter deposit with the Trustee, subject to the final paragraph of this Section 4.08(b), cash in an amount equal to the product of (i) the principal amount of Trust Certificates then outstanding multiplied by (ii) a fraction the numerator of which is an amount equal to (A) the aggregate Cost of all Unprotected Units minus (B) 10% of the aggregate Cost of all units of Trust Equipment then subject to this Agreement and the denominator of which is the aggregate Cost of all units of Trust Equipment then subject to this Agreement. So long as the Company shall have knowledge that units of Trust Equipment then subject to this Agreement having a Cost in excess of 10% of the aggregate Cost of all units of Trust Equipment then subject to this Agreement are Unprotected Units, it shall deliver a weekly report to the Trustee and the Holders of the Trust Certificates, specifying the register numbers of all Unprotected Units known to the Company on the date of such report, the aggregate Cost of such Unprotected Units and the amount of cash which the Company is obligated under the immediately preceding sentence to have on deposit with the Trustee. In the event that such report indicates that the amount of cash which the Company is so obligated to have on deposit with the Trustee exceeds the amount of cash then actually on deposit with the Trustee, the Company shall, subject to the final paragraph of this Section 4.08(b), deposit an amount of cash equal to such excess. In the event that such report indicates that the amount of cash which the Company is so obligated to have on deposit with the Trustee is less than the amount of cash then actually on deposit with the Trustee, the Trustee shall, subject to the final paragraph of this Section 4.08(b) and if no Event of

Default or Inchoate Event of Default shall have occurred and be continuing, release to the Company an amount of cash equal to such difference.

The Company may, at any time and from time to time, direct the Trustee by Request to apply any amount of cash deposited pursuant to this Section 4.08(b) to prepay, on the last day of February, May, August or November next succeeding such Request by at least 30 days, installments of principal of the Trust Certificates as provided in Section 2.03(d), such prepayment to be made pro rata on each outstanding Trust Certificate, provided that no prepayment shall be made pursuant to this Section 4.08(b) if, after taking into account such prepayment and all other prepayments made pursuant to this Section 4.08(b) during the immediately preceding 12-month period, more than \$250,000 in principal amount of Trust Certificates would have been prepaid. In the event of such a prepayment, Unprotected Units shall be assigned and transferred by the Trustee in the amount and the manner provided in Section 2.03(f).

Notwithstanding anything to the contrary contained in this Section 4.08(b), the Company shall not be required to deposit cash, and the Trustee shall not be required to release cash, pursuant to this Section 4.08(b) unless the aggregate amount of cash then to be deposited or released, as the case may be, with respect to Unprotected Units shall equal or exceed \$100,000, except that the Trustee shall, if no Event of Default or Inchoate Event of Default shall have occurred and be continuing, release all cash held by it pursuant to this Section 4.08(b) upon receipt of an Officer's Certificate of the Company indicating that the aggregate Cost of all Unprotected Units does not exceed 10% of the aggregate Cost of all units of Trust Equipment. The Trustee, acting upon a Written Direction, shall be entitled to waive any deposit of cash to be made by the Company pursuant to this Section 4.08(b) without affecting the Company's obligations to make any other deposit of cash, or to deliver the reports, required by this Section 4.08(b).

(c) Whenever any unit of the Trust Equipment shall suffer a Casualty Occurrence, the Company shall, within 30 days after it shall have knowledge of such Casualty Occurrence, deliver to the Trustee and the Original Purchaser (so long as it is a Holder of Trust Certificates) an Officer's Certificate describing such Trust Equipment and stating the AAR Value and the Assigned Value thereof as of the date such Trust Equipment suffered such Casualty Occurrence. Within 30 days after the Company shall have knowledge that the aggregate Assigned Values of all the

units of the Trust Equipment having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence in respect of which a payment shall have been made to the Trustee pursuant to this Section 4.08(c)) shall exceed \$100,000, the Company shall deposit with the Trustee an amount in cash equal to the aggregate Assigned Values of such units. Upon such deposit by the Company, the Trustee shall execute and deliver a bill of sale assigning and transferring to the transferee named by the Company all the right, title and interest of the Trustee in and to such units. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of such Casualty Occurrence. Cash deposited with the Trustee pursuant to this Section 4.08(c) shall be held and applied at the election of the Company (as evidenced by a Request) either (i) as provided in Section 4.06 or (ii) to prepay, on the last day of February, May, August or November next succeeding such Request by at least 30 days, installments of principal of the Trust Certificates as provided in Section 2.03(d), such prepayment to be made pro rata on each outstanding Trust Certificate.

(d) The Company agrees to furnish to the Trustee, on or before April 15 in each year commencing with 1981, an Officer's Certificate dated as of the preceding January 31, (i) stating the amount, description and numbers of all Trust Equipment that may have suffered a Casualty Occurrence since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), (ii) identifying the units of Trust Equipment then being leased by the Company as permitted by Section 4.09 (including the name of the lessee, the term of the lease and the date of the lease pursuant to which such Trust Equipment is leased) and specifying which units of Trust Equipment are not then being leased by the Company and (iii) certifying that there is not any condition or event which constitutes an Event of Default or an Inchoate Event of Default under the Equipment Trust Agreement, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Company has taken or is taking or proposes to take with respect thereto.

SECTION 4.09. Possession of Trust Equipment; Security Interest in Leases. Except as provided in this Section 4.09, the Company will not assign or transfer its rights hereunder, or transfer or lease the Trust Equipment or any part thereof or assign, pledge, transfer or otherwise dispose of any of its rights under any lease permitted

hereunder, without the prior written consent of the Trustee; and the Company shall not, without such written consent, except as herein provided, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment.

So long as an Event of Default shall not have occurred and be continuing, the Company shall be entitled to the possession of the Trust Equipment and, subject to the provisions of the last paragraph of this Section 4.09, to maintain, amend, terminate and enter into leases of the Trust Equipment and to permit its use (including in interchange service) by one or more lessees or users in the United States of America (or any state thereof or the District of Columbia) or in Canada or any Province or Territory thereof, provided that the Company shall not enter into leases or car contracts relating to the use of Trust Equipment with any lessee or user incorporated, or having its principal place of business, in Canada or any Province or Territory thereof (herein called "Canadian Lessees") if the aggregate Cost of Trust Equipment subject to leases and car contracts with Canadian Lessees would exceed 10% of the aggregate Cost of all the Trust Equipment then subject to this Agreement and provided, further, that the Company shall not enter into any per diem pass through lease or car contract relating to the use of Trust Equipment with any lessee or user if the aggregate number of railroad cars of a particular type constituting Trust Equipment subject to leases and car contracts with any such lessee or user would exceed 50% of the estimated requirements for cars of such type (determined in good faith by the Company by the application of standards and measurements at the time the Company placed orders for the manufacture of the cars of such type which constitute such Trust Equipment) of such lessee or user. Upon entering into any lease or car contract with a Canadian Lessee, the Company will promptly furnish to the Trustee an Officer's Certificate to the effect set forth in the first proviso of this paragraph which shall also include a statement of the Cost of the Trust Equipment referred to therein. Promptly after entering into any lease (other than those listed on Schedule A hereto) of Trust Equipment or any amendment to a lease of Trust Equipment which adds or substitutes units of Equipment or changes the term of the lease, the Company will execute and deliver, and cause to be filed with the Interstate Commerce Commission pursuant to Section 6.03, a supplement or amendment hereto which effects appropriate

modifications to the information set forth in Schedule A hereto and will also deliver and cause to be filed with the Trustee and with the Interstate Commerce Commission a copy of such lease or amendment. Any lease by the Company entered into pursuant to this Section 4.09 may, subject to the provisions of Section 4.07, provide for lettering or marking upon such Trust Equipment for convenience of identification of the leasehold interest of such lessee therein.

As security for the payment and performance of the obligations of the Company hereunder, the Company hereby grants, pledges and assigns to the Trustee all its right, title and interest as lessor in and to each lease (including the leases referred to in Schedule A hereto) of any unit of the Trust Equipment existing as of the date hereof or entered into in the future, but only to the extent such right, title and interest in and to such lease relates to units of the Trust Equipment, and all rentals, moneys and proceeds payable to or receivable by the Company under any such lease with respect to units of the Trust Equipment, and the Company shall execute and deliver a Lease Assignment with respect to such lease, provided that (a) so long as no Event of Default shall have occurred and be continuing, the Company shall be entitled to collect and receive all such rentals, moneys and proceeds, and to exercise all other rights of lessor as to the use and operation of the Trust Equipment, and (b) during the continuance of any Event of Default, all such rentals, moneys and proceeds shall be paid to the Trustee and applied to the payment or prepayment of the principal of, and/or to the payment of interest due and owing on, the Trust Certificates, all as may be specified in a Written Direction or, in the absence thereof, as may be determined by the Trustee. It is hereby agreed that the Company will under no circumstance have the right (i) to grant, pledge or assign, other than pursuant to this Section 4.09, any of its right, title and interest in and to any lease (including the leases referred to in Schedule A hereto) relating to any unit of the Trust Equipment existing as of the date hereof or entered into in the future or (ii) to permit any other railroad equipment to be delivered under any such lease unless the Trustee shall have received from the lessee party to such lease an acknowledgment that the Company has sold (or caused to be sold) the units of the Trust Equipment covered by such lease to the Trustee and that the right, title and interest of the Company under such lease, to the extent relating to such units, have been assigned to the Trustee, a confirma-

tion that any assignment of any of the right, title and interest of the Company under such lease, to the extent relating to railroad equipment which is not Trust Equipment, shall not impair or offset the obligation to pay to the Trustee all rentals under such lease in respect of each unit of Trust Equipment and a consent of such lessee to the effect that the right, title and interest of the Company under such lease, to the extent relating to railroad equipment which is not Trust Equipment, may either be retained by the Company or assigned to others, provided that such acknowledgment shall not be required if such lease by its terms provides substantially to the effect set forth in clause (ii) of this paragraph.

Notwithstanding anything to the contrary contained herein or in any Lease Assignment, each lease of Trust Equipment by the Company pursuant to this Section 4.09 shall be pursuant to a Lease, and the Company will not amend, terminate or replace any Lease covering any of the Trust Equipment without the prior written consent of the Holders of 66 2/3% in principal amount of the outstanding Trust Certificates if such amendment, termination or replacement would impair the security provided hereunder by the assignment to the Trustee of the Leases in respect of the Trust Equipment hereunder. Any amendment of a Lease which does not reduce the term or the projected amount of rentals payable thereunder and which does not result in such Lease failing to meet the requirements set forth in the definition of Lease contained herein shall not be deemed to impair the security provided hereunder. The Company will deliver to the Trustee and the Original Purchaser (so long as it is a Holder of Trust Certificates) copies of all leases assigned hereunder and copies of all amendments thereof.

The Company shall be entitled, without the consent of the Trustee or any Holder of Trust Certificates, to terminate any Lease upon a default by the lessee thereunder and to lease, pursuant to a Lease, the units of Trust Equipment covered by such terminated Lease to another lessee deemed suitable by the Company.

SECTION 4.10. Maintenance of Insurance. Upon the delivery of any unit of Trust Equipment the Company will promptly effect and maintain or cause to be effected and maintained with financially sound and reputable companies, insurance policies (i) insuring each such unit of Trust Equipment against loss by fire, explosion, theft and

such other casualties as are usually insured against by companies engaged in the same or similiar business and with coverage in an amount at least equal to the value of each such unit of Trust Equipment (but such coverage for all railroad rolling stock owned or leased by the Company may be limited to \$5,000,000 for each occurrence and the policies relating thereto may contain provisions relating to deductibles which are comparable to those contained in policies carried by other companies engaged in the same or a similiar business), (ii) insuring the Company, the Trustee and the Holders of the Trust Certificates against liability for personal injury and property damage caused by or relating to such railroad rolling stock or its use with coverage in the amount of at least \$5,000,000, and (iii) insuring the Company for the loss of revenues from any unit of railroad rolling stock which becomes inoperable due to damage for an 80-day period commencing 10 days after the date of such damage but only if such insurance for loss of revenues is carried with respect to all of the Company's units of railroad rolling stock. All such insurance policies shall be in such form and have such coverage as shall be satisfactory to the Trustee, shall name the Trustee and the Holders of the Trust Certificates as additional insureds and shall provide that (a) losses shall be payable to the Company and the Trustee as their respective interests may appear, (b) the insurer thereunder waives all rights of subrogation against the Trustee and the Holders of the Trust Certificates, (c) that 30 days' prior written notice of cancellation or material change or non-renewal of any policy shall be given to the Trustee, and (d) that such insurance as to the interests of the Trustee and the Holders of the Trust Certificates therein shall not be invalidated by any act or neglect of the Company or any lessee or by any foreclosure or other remedial proceedings or notices thereof relating to the Trust Equipment or any interest therein nor by any change in the title or ownership of the Trust Equipment or any interest therein or with respect thereto, or by the use or operation of the Trust Equipment for purposes more hazardous or in a manner more hazardous than is permitted by such policy. The Company shall furnish the Trustee with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal prior to the expiration date of the original policy or policies.

If the Company shall fail to maintain or cause to be maintained such insurance, the Trustee may (but shall

be under no obligation so to do) cause the Trust Equipment to be insured in such amount as the Trustee shall deem advisable for the protection of the Holders of the Trust Certificates and may demand and recover from the Company the premiums on such insurance plus any financing expense incurred by the Trustee in order to pay such premiums. In such event, the title of the Trustee to the Trust Equipment shall, notwithstanding the making of all other payments hereunder to be made by the Company, remain in the Trustee until the repayment of the amount so paid for insurance with any financing expense, as aforesaid, and the repayment of such amount is hereby expressly made one of the obligations to be performed before title to the Trust Equipment shall vest in the Company.

Any insurance moneys paid to the Trustee on account of any loss in respect of the Trust Equipment covered by insurance effected by the Trustee shall be held and retained by the Trustee in trust for the equal and proportionate benefit of the Holders of the Trust Certificates, until the replacement or repair, as provided in Section 4.08, of the Trust Equipment covered by such insurance. Upon proof satisfactory to the Trustee of the proper replacement or repair of such Trust Equipment, such insurance or other moneys received by the Trustee shall be applied by the Trustee to the payment of the cost of such replacement or repair or to reimburse the Company, to the extent of such funds, for payments made by it in respect of such replacement or repair. An Officer's Certificate of the Company as to the proper repair of such Trust Equipment, free from any Lien, or the documents provided in Section 4.06(b) with respect to the replacement of such Trust Equipment, shall be full and complete protection to the Trustee.

SECTION 4.11. Indemnity. The Company covenants and agrees to indemnify the Trustee and each Holder of a Trust Certificate against any and all losses, costs claims and expenses, including attorney's fees (herein "claims"), arising out of or connected with the ownership, lease or use of any of the Trust Equipment and particularly, but not by way of limitation, against any and all claims or losses arising out of the use of any patented inventions in and about the Trust Equipment, or arising out of the failure of the Company to comply in all respects with the laws of the United States of America, and of all the states and other jurisdictions in which the Trust Equipment,

or any unit thereof, may be operated, and with all lawful acts, rules, regulations and orders of any commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances, provided that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the Holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof. The obligations of the Company under this Section shall survive any termination or satisfaction of the Trust Agreement.

ARTICLE FIVE

EVENTS OF DEFAULT AND REMEDIES

SECTION 5.01. Events of Default. The Company covenants and agrees that in case:

(a) the Company shall default in the payment of any part of the rental payable pursuant to subdivision (c) or (d) of the first paragraph of Section 4.04 for more than five days after the same shall have become due and payable; or

(b) the Company shall default in the payment of any part of the rental payable pursuant to subdivision (a) or (b) of the first paragraph of Section 4.04 for more than ten days after the same shall have become due and payable; or

(c) the Company shall enter into any lease, amendment of a lease or car contract prohibited by Section 4.09 or make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make any unauthorized transfer or lease (including,

for the purpose of this clause, contracts for the use thereof) of any of the Trust Equipment, or, except as herein authorized, shall part with the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment, amendment, transfer or lease to be canceled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancellation and recovery of possession, or within such 30 days to deposit with the Trustee a sum in cash equal to the Assigned Value, as of the date of such unauthorized action, of such Trust Equipment (any sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer, amendment or lease and the recovery of possession by the Company of such Trust Equipment); or

(d) the Company shall default in the performance or observance of any agreement contained in Section 6.05; or

(e) the Company shall, for more than 30 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to perform or comply with any of the terms and covenants hereof on its part to be performed or complied with, or to make provision satisfactory to the Trustee for such performance or compliance; or

(f) the lease provided for herein shall be terminated by operation of law; or

(g) either the Company or any Restricted Subsidiary shall (i) be generally not paying its debts as they become due, (ii) file, or consent by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (iii) make an assignment for the benefit of its creditors, (iv) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (v) be adjudicated a bankrupt or insolvent, or (vi) take

corporate action for the purpose of any of the foregoing; or

(h) a court or governmental authority of competent jurisdiction shall enter an order, appointing, without consent by the Company or any Restricted Subsidiary, as the case may be, a custodian, receiver, trustee or other officer with similar powers with respect to the Company or any Restricted Subsidiary, as the case may be, or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company or any Restricted Subsidiary, as the case may be, or if any such petition shall be filed against the Company or any Restricted Subsidiary, as the case may be, and such petition shall not be dismissed within 60 days; or

(i) default shall be made by the Company in the performance of or compliance with any of the covenants, agreements or conditions contained in the Purchase Agreement (other than the covenant contained in Section 7(h) thereof) required to be performed or complied with by it and such default shall continue unremedied for a period of 30 days, or default shall be made by the Company in the performance of the Company's covenant contained in Section 7(h) of the Purchase Agreement; or

(j) any representation or warranty heretofore or hereafter made by or on behalf of the Company herein or in the Purchase Agreement or in any other certificate or other writing delivered under or pursuant to this Agreement or the Purchase Agreement or in connection with any provision hereof or thereof or related to the transactions contemplated hereby or thereby shall prove to have been false or incorrect or breached in any material respect on the date as of which made, and such default or breach shall continue for a period of 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by the Original Purchaser, if it is a Holder of Trust Certificates, or any institutional

investor which is a Holder of 3% or more in aggregate principal amount of the Trust Certificates then outstanding; or

(k) the Company or any Restricted Subsidiary defaults in any payment of principal of or interest on any other obligation for money borrowed or any other obligation constituting Debt of the Company or such Restricted Subsidiary (or any obligation under conditional sale or other title retention agreements or any obligation issued or assumed as full or partial payment for property whether or not secured by purchase money mortgage or any obligation under notes payable or drafts accepted representing extensions of credit) beyond any period of grace provided with respect thereto, or defaults in the performance of any other agreement, term or condition contained in any agreement under which any such obligation is created (or if any other default under any such agreement shall occur and be continuing) if the effect of such default is to cause, or to permit the holder or holders of such obligation (or a trustee on behalf of such holder or holders) to cause, such obligation to become due prior to its stated maturity or scheduled date for payment and the aggregate principal amount which could so become due exceeds \$100,000; or

(l) the Company or any Restricted Subsidiary is subject to any final judgment for the payment of money in excess of \$250,000 which is not discharged in full or stayed within 60 days of such judgment's entry;

then, in any such case (herein sometimes called an "Event of Default"), the Trustee in its discretion may, and upon the written request of the Holders of not less than 66 2/3% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals thereafter payable by the Company as set forth in Section 4.04 and not theretofore paid (but not including any rentals required for the payment of interest accruing after the date of payment of all amounts due). Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the rate of 13.875% per annum, to the extent permitted by applicable law, on any portion thereof overdue.

In case one or more Events of Default shall happen and be continuing, the Trustee in its discretion also may, and upon written request of the Holders of not less than 66 2/3% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable, together with all interest accrued thereon, provided that if a subsidiary (the "Weyerhaeuser subsidiary") of Weyerhaeuser Company, a Washington corporation ("Weyerhaeuser"), is a lessee of Trust Equipment and, within 30 days after written notice of an Event of Default is given to Weyerhaeuser, Weyerhaeuser (A) expressly assumes in writing the due and punctual payment of the Weyerhaeuser Proportion (as defined below) of the principal of and premium, if any, and interest on each Trust Certificate and the due and punctual performance and observance of all the obligations, liabilities and covenants of the Company contained in this Agreement (other than in Sections 6.05(a) through (m) hereof and, in the case of Section 4.04 hereof, limited to the Weyerhaeuser Proportion of rental payments required under Section 4.04) and in the Weyerhaeuser Proportion of each Trust Certificate, in each case as it relates to the Trust Equipment leased to the Weyerhaeuser subsidiary, (B) pays to the Trustee a sum sufficient to pay all matured installments of interest upon the Weyerhaeuser Proportion of each Trust Certificate and the principal of the Weyerhaeuser Proportion of each Trust Certificate which shall have become due otherwise than by acceleration and any and all other amounts then due and payable under this Agreement (other than the principal of the Weyerhaeuser Proportion of each Trust Certificate which shall have become due by acceleration), (C) expressly acknowledges in writing that the Trust Equipment leased to the Weyerhaeuser subsidiary is subject to the lien and security interest created by this Agreement, (D) records and files, at its sole expense, with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, and in such other public offices as the Trustee may reasonably request, an assumption agreement and such other documents as the Holders shall request in order to maintain and preserve the lien and security interest created by this Agreement in the Trust Equipment, (E) agrees to maintain its corporate existence in a manner satisfactory to the Holders of Trust Certificates and (F) furnishes to the Holders documents and opinions of counsel corresponding to those referred to in Sections 4.7, 4.8, 4.11, 4.12 and 4.13 of the Purchase Agreement, modified

to the extent necessary to be applicable to such assumption and satisfactory in form and substance to the Holders, then the Holders shall waive all Events of Default, and rescind and annul such declaration and its consequences, only to the extent such event or declaration relates to the Trust Equipment being leased to the Weyerhaeuser subsidiary; but no such waiver or rescission and amendment shall extend to or shall affect any subsequent default by Weyerhaeuser or the Weyerhaeuser subsidiary or shall impair any right consequent thereon. For purposes of this paragraph, the "Weyerhaeuser Proportion" shall mean a fraction, the numerator of which is the Assigned Value of the units of Trust Equipment leased by the Weyerhaeuser subsidiary and the denominator of which is the Assigned Value of all units of Trust Equipment. If any Trust Equipment is leased to a Weyerhaeuser subsidiary, then the Trustee shall give prompt written notice to Weyerhaeuser at the address supplied to the Trustee for that purpose of each Event of Default under this Agreement.

In case the Company shall fail to pay any installment of rental payable pursuant to Section 4.04(c) or (d) when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of five days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Trust Certificates and collect in the manner provided by law out of the property of the Company wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company, under the bankruptcy law or any other applicable law, or in case a custodian or receiver or trustee shall have been appointed for the property of the Company, or in case of any other judicial proceedings relative to the Company, or to the creditors or property of the Company, the Trustee, irrespective of whether the rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pur-

suant to the provisions of this Section 5.01, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (but not including any rentals required for the payment of interest accruing after the date of payment of all amounts due) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or wilful misconduct) and of the Holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the Holders of the Trust Certificates and of the Trustee on their behalf; and any custodian, receiver of the Trust Certificates or trustee in bankruptcy or reorganization is hereby authorized by each of the Holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the Holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or wilful misconduct.

All rights of action under this Agreement or under any of the Trust Certificates may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof at any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the Holders of the Trust Certificates in respect of which such judgment has been recovered. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Trust Certificates, and it shall not be necessary to make any Holders parties to such proceedings.

SECTION 5.02. Remedies. In case of the happening of any Event of Default, the Trustee may by its agents enter upon the premises of the Company or of any other person where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from such premises, using and employing in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Company or other person in possession of such Equipment. The Trustee may retain all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, incentive per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Company as provided in Section 5.01), may upon five days notice to the Company sell the same or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, insofar as may be necessary to perform and fulfill the trust hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the Holders of the then outstanding Trust Certificates. Upon any such sale, the Trustee itself or any Holder of Trust Certificates may bid for the property offered for sale or any part thereof and shall have the right to credit on the purchase price any and all sums of money due and payable on the Trust Certificates or otherwise hereunder. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, and all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any Event of Default and such taking possession, withdrawal, lease or sale by the Trus-

tee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, or of principal and interest in respect of the Trust Certificates, and the Company shall be and remain liable for the same until such sums have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the obligations of the Company under this Agreement.

SECTION 5.03. Application of Proceeds. If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 5.01 and 5.02, all payments made by the Company to the Trustee after such Event of Default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates or a part thereof, or interest thereon), shall be applied by the Trustee to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement and (b) of the interest then due, with interest on overdue interest at the rate of 13.875% per annum to the extent permitted by applicable law, and of the premium, if any, then due and of the principal of all the outstanding Trust Certificates, with interest thereon at the rate of 13.875% per annum, from the last preceding payment date on which interest was paid in full, whether such Trust Certificates shall have then have matured by their terms or not, all as may be specified in a Written Direction or, in the absence thereof, as may be determined by the Trustee, and all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then pro rata without preference between principal (including premium, if any) and interest.

After all such payments shall have been made in full, the title to any of the Trust Equipment remaining

unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 5.04. Waivers of Default. Prior to the declaration of the acceleration of the maturity of the rentals and of the maturity of all the Trust Certificates by their terms or through acceleration as provided in Section 5.01, the Holders of not less than 66 2/3% in aggregate principal amount of the Trust Certificates at the time outstanding may on behalf of the Holders of all the Trust Certificates (but subject to the provisions of Section 9.02 which require the consent of the Holder of each outstanding Trust Certificate with respect to certain waivers) waive any past Event of Default and its consequences, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as provided in Section 5.01, but before February 28, 1995, all arrears of rent (with interest at the rate of 13.875% per annum upon any overdue installments, to the extent permitted by applicable law), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates, and any other rental installments, which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every Event of Default and Inchoate Event of Default with respect to any covenant or provision hereof shall be made good or cured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the Holders of not

less than 66 2/3% in principal amount of the Trust Certificates then outstanding, shall by written notice to the Company rescind and annul such declaration or declarations and the consequences thereof, but no such rescission or annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 5.05. Obligations of the Company Not Affected by Remedies. No retaking of possession of the Trust Equipment by the Trustee, nor any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of any Holder of the Trust Certificates, nor any delay or indulgence granted to the Company by the Trustee or by any Holder of the Trust Certificates, shall affect the obligations of the Company hereunder or under the guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and interest on the Trust Certificates.

SECTION 5.06. The Company to Deliver Trust Equipment to Trustee. In case the Trustee shall demand possession of any of the Trust Equipment pursuant to this Agreement, the Company will, at its own expense and risk, forthwith and in the usual manner and at usual speed, cause such Trust Equipment to be transported to such point or points as shall reasonably be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep such Trust Equipment, at the risk and expense of the Company, on any lines of railroad or premises approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same.

During any storage period, the Company will, at its own cost and expense, maintain and keep each such unit of Trust Equipment in good order and repair and will permit the inspection of the Trust Equipment by the Trustee, the Trustee's representatives and prospective purchasers, lessees and users.

This agreement to deliver the Trust Equipment and furnish facilities as hereinbefore provided is of the essence of this Agreement and, upon application to any

court of equity having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring specific performance hereof. The Company hereby expressly waives any and all claims against the Trustee and its agent or agents for damages of whatever nature in connection with any retaking of Trust Equipment in any reasonable manner.

SECTION 5.07. Trustee to Give Notice of Default. The Trustee shall give to the Holders of the Trust Certificates notice of each Event of Default or Inchoate Event of Default known to the Trustee within 15 days after its obtaining knowledge thereof, unless such Event of Default or Inchoate Event of Default shall have been remedied or cured before the giving of such notice.

SECTION 5.08. Limitations on Suits by Holders of Trust Certificates. No Holder of the Trust Certificates shall have any right by virtue of or by availing itself of any provision of this Agreement to institute any action or proceedings at law or in equity or in bankruptcy or otherwise, upon or under or with respect to this Agreement, or for the appointment of a custodian, receiver or trustee, or for any other remedy hereunder, unless such Holder previously shall have given to the Trustee written notice of default and of the continuance thereof, as hereinbefore provided, and unless also the Holders of not less than 66 2/3% in aggregate principal amount of the Trust Certificates then outstanding shall have made written request to the Trustee to institute such action or proceedings in its own name as trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 30 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceedings and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 5.10; it being understood and intended that no one or more Holders of the Trust Certificates shall have any right in any manner whatever, by virtue or by availing itself of any provision of this Agreement, to affect, disturb, or prejudice the rights of any other Holder of the Trust Certificates, or to obtain or seek to obtain priority over or preference to any other Holder of the Trust Certificates or to enforce any right under this Agreement, except in the manner herein provided and for the equal, ratable and

common benefit of all Holders of the Trust Certificates. For the protection and enforcement of the provisions of this Section 5.08, each and every Holder of the Trust Certificates and the Trustee shall be entitled to such relief as can be given either at law or in equity.

SECTION 5.09. Unconditional Right of Holders of Trust Certificates to Sue for Principal and Interest. Notwithstanding any other provision in this Agreement, the right of any Holder of the Trust Certificates to receive payment of the principal of and interest on the Trust Certificates held by it on or after the respective due dates expressed in such Trust Certificates, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder, except no such suit shall be instituted or prosecuted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Agreement upon any property subject hereto.

SECTION 5.10. Control by Holders. The Holders of not less than 66 2/3% in aggregate principal amount of the Trust Certificates at the time outstanding shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; provided that, subject to the provisions of Section 8.02, the Trustee shall have the right to decline to follow any such direction if the Trustee being advised by counsel shall determine that the action so directed may not lawfully be taken or might result in personal liability on the part of the Trustee.

SECTION 5.11. Remedies Cumulative. The remedies in this Agreement provided in favor of the Trustee and the Holders of the Trust Certificates, or any of them, including any rights under the guaranty of the Company as provided in Section 6.01 and endorsed on the Trust Certificates, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity, and any such remedies and rights shall be subject in all respects to any mandatory requirements of law at the time applicable thereto, to the extent such requirements may not be waived on the part of the Company.

ARTICLE SIX

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 6.01. Guaranty of Company. The Company unconditionally covenants, agrees and guarantees that each Holder of the Trust Certificates shall receive the principal amount of each Trust Certificate, and the premium (if any) thereon, in immediately available funds in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof and of this Agreement (and, if not so paid, with interest thereon until paid at the rate of 13.875% per annum), and shall receive interest thereon in like money at the rate specified therein, at the times and places and otherwise as expressed in the Trust Certificates (and, if not so paid, with interest thereon until paid at the rate of 13.875% per annum to the extent permitted by applicable law); and the Company further covenants and agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the principal thereof and of the premium (if any) and the interest thereon, in substantially the form hereinbefore set forth. Such guaranty is an absolute, present and continuing guaranty of payment and not of collectibility and is in no way conditioned or contingent upon any attempt to collect from the Trustee or to realize upon any security provided therefor, or upon any other condition or contingency. Such guaranty so endorsed shall be signed in the name and on behalf of the Company by the manual signature of its President, a Vice President or its Treasurer.

SECTION 6.02. Miscellaneous Affirmative Covenants.
The Company covenants as follows:

(a) Filings; Preservation of Security. The Company will, promptly after the execution and delivery of this Agreement, and each supplement or amendment hereto, and each separate Lease Assignment, cause the same to be duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record and will refile, re-

register and rerecord any and all further instruments required by law or reasonably requested by the Trustee for the purpose of proper protection of the rights of the Trustee in and to the Trust Equipment and the assignment hereunder, as additional security, of the interests of the Company in and to the Leases of the Trust Equipment listed in Schedule A, of proper protection of the rights of the Holders of the Trust Certificates or of fully carrying out and effectuating this Agreement and the intent thereof, and from time to time shall provide such Opinions of Counsel as reasonably requested by the Trustee with respect to such matters.

(b) Opinion of Counsel upon Filings. The Company will, promptly after the execution and delivery of this Agreement, and each supplement or amendment hereto, and each separate Lease Assignment, furnish to the Trustee an Opinion of Counsel stating that, in the opinion of such counsel, such document or a financing statement relating to such document has been properly filed, registered and recorded (or refiled, reregistered and rerecorded, if necessary) as is necessary for the proper perfection and protection in the United States of the right, title and interest of the Trustee in and to the Trust Equipment and the assignment hereunder, as additional security, of the interests of the Company in and to the leases of the Trust Equipment listed in Schedule A hereto, as supplemented, and the rights of the Trustee and the Holders of the Trust Certificates and reciting the details of such action.

(c) Annual Opinion of Counsel. The Company will furnish to the Trustee, not more than three months after the anniversary in each year, commencing with the year 1981, of the first filing, registering or recording of this Agreement, an Opinion of Counsel stating either that, in the opinion of such counsel, (i) such action has been taken with respect to the filing, registering or recording, and the refiling, reregistering and rerecording of this Agreement and each supplement and amendment hereto and each separate Lease Assignment as is necessary for the proper perfection and protection in the United States of the right, title and interest of the Trustee under this Agreement in and to the Trust Equipment and the assignment hereunder, as additional security, of the interests of the Company in and to the leases of the Trust Equipment listed in Schedule A hereto, as supplemented, and the rights of the Trustee and the Holders of the Trust Certificates and

reciting the details of such action, or (ii) no such action is necessary for any of such purposes.

(d) Canadian Filings and Opinions. The Company will, promptly after the execution and delivery of this Agreement, and each supplement or amendment hereto, and each separate Lease Assignment, furnish to the Trustee an opinion of Canadian counsel reasonably satisfactory to the Trustee to the effect that, with respect to each Province of Canada, (i) all recordings, registrations or filings necessary or desirable in such Province to establish, perfect, preserve and protect the rights of the Trustee under this Agreement in and to each unit of the Trust Equipment located in such Province and each lease permitted by Section 4.09 relating thereto against any and all subsequent purchasers or mortgagees from or under the Company or from creditors of the Company have been made (or, if such necessary or desirable recordings, registrations or filings have not been made, setting forth such recordings, registrations or filings) or (ii) that no recording, registration or filing is necessary or desirable in such Province to protect such rights of the Trustee against such purchasers, mortgagees or creditors. The Company at any time and from time to time may, but shall not be required to, make any recordings, registrations, or filings set forth in such opinion as being necessary or desirable. The Company will also furnish to the Trustee, at the same time as the Opinion of Counsel provided for in Section 6.02(c) is furnished to the Trustee, an opinion of Canadian counsel reasonably satisfactory to the Trustee to the effect set forth in either clause (i) or clause (ii) of Section 6.02(c) with respect to each Province of Canada, provided that the Company shall be required to furnish such opinion of Canadian counsel only if, at any time during the twelve-month period immediately preceding the date on which the Opinion of Counsel referred to in Section 6.02(c) is furnished to the Trustee, Trust Equipment having an aggregate Cost in excess of 5% of the aggregate Cost of all units of Trust Equipment shall have been in Canada.

(e) Payment of Taxes; Discharge of Liens. The Company will, promptly pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, all taxes, assessments and other governmental charges which may be imposed upon or with respect to any Trust Equipment or upon or with respect to the use or operation thereof or upon or with respect to

the transfer of title thereto to or from the Trustee, and any other debt, obligation or claim which if unpaid might become a Lien not permitted by Section 6.05(c) upon or against any of the Trust Equipment; but this provision shall not require the payment of any such tax, charge, assessment, debt, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, provided that such contest will not materially endanger the rights or interests of the Trustee or of the Holders of the Trust Certificates and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect.

(f) Compliance with Law. The Company will comply in all respects with the laws (including, without limitation, applicable statutes, regulations, orders and restrictions relating to equal employment opportunities and environmental standards or controls) of all jurisdictions in which the Trust Equipment may be operated and with all lawful rules, regulations and orders of all governmental bodies having power to regulate or supervise any of the Trust Equipment, provided that the Company may in good faith contest the validity of such law, rule, regulation or order or the application thereof to the Trust Equipment or any part thereof in any reasonable manner which will not materially endanger the rights or interests of the Trustee or of the Holders of the Trust Certificates.

(g) Books and Records; Inspection of Property. The Company will keep accurate corporate books and financial records and, so long as any Trust Certificate shall be outstanding, will permit any Person designated by the Trustee in writing, at no expense to the Company, to visit and inspect the Trust Equipment (subject to the rights of the lessees thereof), to examine the books of account and records of the Company and its Subsidiaries relating to the Trust Equipment, to make copies thereof and extracts therefrom, to discuss the affairs, finances and accounts of the Company and its Subsidiaries with, and to be advised as to the same by, its and their officers and employees and its and their independent public accountants, all at such reasonable times and as often as the Trustee may reasonably request, it being understood that the Trustee will give reasonable prior notice to the Company of any such visit, inspection, examination, discussion or advice.

SECTION 6.03. Further Assurances. The Company covenants that from time to time it will do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

SECTION 6.04. Trustee's Right to Perform for the Company. If the Company fails to perform or comply with any of its agreements contained in Sections 6.02 and 6.03 of this Agreement, the Trustee may upon notice to the Company itself perform or comply with such agreement, and the amount of the reasonable costs and expenses of the Trustee incurred in connection with such performance or compliance, together with interest on such amount at the rate of 13.875% per annum, to the extent permitted by applicable law, shall be payable by the Company upon demand and shall be received by and under this Agreement until paid by the Company.

SECTION 6.05. Negative Covenants. The Company covenants that from the date of this Agreement and thereafter so long as any of the Trust Certificates are outstanding:

(a) Consolidated Stockholders' Equity. The Company will not at any time permit Consolidated Stockholders' Equity to be less than \$35,000,000.

(b) Restricted Junior Payments and Restricted Investments. (i) The Company will not directly or indirectly declare, order, pay, make or set apart any sum or property for any Restricted Junior Payment (except for payments permitted by subdivision (ii) of this Section 6.05(b)), and the Company will not, and will not permit any Restricted Subsidiary to, make or become obligated to make any Restricted Investment, unless, immediately after giving effect to any such proposed action, the aggregate of (A) all sums or property included in all Restricted Junior Payments directly or indirectly declared, ordered, paid, made or set apart by the Company during the period after July 31, 1979 to and including the date of such proposed action and (B) the amounts of all Restricted Investments directly or indirectly made by the Company, or which the Company has become obligated to make, during such period in any Person (other than a Person which is a Restricted Subsidiary on the date of such proposed action) shall not exceed the sum of:

(x) 50% (but, in the case of a deficit, 100%) of Consolidated Net Income for such period, plus

(y) the aggregate amount of the net cash proceeds received by the Company during such period from the sale of its stock during such period, and as consideration for the issuance during such period of Debt of the Company convertible into stock of the Company, but only to the extent that any such Debt has been converted into shares of stock during such period, plus

(z) \$4,000,000.

(ii) The provisions of subdivision (i) of this Section 6.05(b) shall not apply to payments of regular cash dividends on the Preferred Stock of the Company outstanding on the date of this Agreement, provided that the amount available for Restricted Junior Payments and Restricted Investments pursuant to subdivision (i) of this Section 6.05(b) shall be reduced (whether or not such reduction shall result in a deficit balance) by the total of all payments declared, ordered, paid or made pursuant to this subdivision (ii).

(iii) The Company will not declare any dividend (other than a dividend payable solely in shares of its own stock or payable pursuant to Section 6.05(b)(ii)) which is payable more than 60 days after the date of declaration thereof, and the Company will not permit any Restricted Subsidiary, directly or indirectly, to declare, order, pay or make any Restricted Junior Payment or to set apart any sum or property for any such purpose. The amount of any dividend or other distribution or payment in property shall be deemed to be the greater as between the fair market value thereof (as determined in good faith by the Board) at the time of distribution or payment and the net book value thereof on the books of the Company (determined in accordance with Generally Accepted Accounting Principles) as at such time.

(c) Liens. The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien upon any of its property or assets, whether now owned

or hereafter acquired (whether or not provision is made for the equal and ratable securing of the Trust Certificates in accordance with the provisions of Section 6.06), except:

(i) the Lien of this Agreement;

(ii) Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and if appropriate reserves have been established therefor;

(iii) other Liens (other than any Lien imposed by the Employee Retirement Income Security Act of 1974) incidental to the conduct of its business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances or credit, and which do not in the aggregate materially detract from the value of its property or assets or materially impair the use thereof in the operation of its business;

(iv) Liens on property or assets of a Restricted Subsidiary to secure obligations of such Restricted Subsidiary to the Company or another Restricted Subsidiary;

(v) any Lien created to secure all or any part of the purchase price, or to secure Debt incurred or assumed to pay all or any part of the purchase price, of property acquired by the Company or a Restricted Subsidiary, provided that (A) any such Lien shall be confined solely to the item or items of property so acquired, and if required by the terms of the instrument originally creating such Lien, other property which is an improvement to or is acquired for specific use in connection with such acquired property or consists of leases, maintenance contracts or other interests relating to such acquired property which are customarily encumbered to secure the payment of Debt incurred to pay the purchase price of such property, (B) the principal amount of the Debt secured by any such Lien shall at no time exceed an amount equal to 80% (but 100% of such amount in the case of property the acquisition of which is financed through obligations in respect of a

Capitalized Lease) of the lesser of (1) the cost to the Company or such Restricted Subsidiary of the property so acquired and (2) the fair market value of such property (as determined in good faith by the Board) at the time of such acquisition, and (C) any such Lien shall be created within twelve months after, in the case of property, its acquisition, or, in the case of improvements, their completion;

(vi) any Lien existing on property of a corporation immediately prior to its being consolidated or merged into the Company or a Restricted Subsidiary or its becoming a Restricted Subsidiary, or any Lien existing on any property acquired by the Company or any Restricted Subsidiary at the time such property is so acquired (whether or not the Debt secured thereby shall have been assumed), provided that no such Lien shall have been created or assumed in contemplation of such consolidation or merger or such corporation's becoming a Restricted Subsidiary or such acquisition of property, and, provided, further, that each such Lien shall at all times be confined solely to the item or items of property so acquired, and if required by the terms of the instrument originally creating such Lien, other property which is an improvement to or is acquired for specific use in connection with such acquired property or consists of leases, maintenance contracts or other interests relating to such acquired property which are customarily encumbered to secure the payment of Debt incurred to pay the purchase price of such property;

(vii) any Lien renewing, extending or refunding any Lien permitted by subdivision (v) or (vi) of this Section 6.05(c), provided that the principal amount of Debt secured by the Lien immediately prior thereto is not increased or the maturity thereof reduced and the Lien is not extended to other property; and

(viii) Liens represented by any equipment trust agreement or other financing agreement relating to the financing or refinancing of railroad rolling stock or other transportation equipment;

provided that (A) no Lien shall be created or assumed by the Company or any Restricted Subsidiary pursuant to paragraph (v) or (vi) of this Section 6.05(c) or by any Restricted Subsidiary pursuant to paragraph (viii) of this Section 6.05(c) unless, immediately after giving effect thereto, the aggregate principal amount outstanding of all Debt of the Company and Restricted Subsidiaries secured by Liens permitted by paragraphs (v), (vi) and (vii) of this Section 6.05(c) plus all Debt of Restricted Subsidiaries secured by Liens permitted by paragraph (viii) of this Section 6.05(c) shall not exceed 3% of Consolidated Tangible Net Worth, and (B) no Lien shall be created or assumed pursuant to paragraph (v), (vi) or (viii) of this Section 6.05(c) unless, immediately after giving effect thereto, the Company shall be permitted to become liable with respect to at least \$1 of additional Senior Funded Debt pursuant to Section 6.05(d).

(d) Short-Term Debt and Funded Debt. (i) Restrictions on Short-Term Debt. The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to any Short-Term Debt (other than Short-Term Debt of a Restricted Subsidiary owing to the Company or to another Restricted Subsidiary), except that the Company or any Restricted Subsidiary may become and remain liable with respect to unsecured Short-Term Debt at any time, provided that during the twelve-month period immediately preceding any day on which such Short-Term Debt is outstanding there shall have been a period of at least 45 consecutive days selected as a clean-down period by the Company either during which there shall have been no Consolidated Short-Term Debt outstanding or on each day of which the Company could have incurred Senior Funded Debt in an amount equal to the maximum amount of Consolidated Short-Term Debt outstanding during such clean-down period.

(ii) General Restrictions on Funded Debt.
The Company will not at any time permit:

(A) the aggregate Subordinated Funded Debt of the Company to exceed 50% of Consolidated Stockholders' Equity; or

(B) Consolidated Senior Funded Debt to exceed 450% of the Consolidated Borrowing Base,

and, in addition, after March 31, 1980, the Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly create, incur, assume, guarantee or otherwise become directly or indirectly liable with respect to any Senior Funded Debt unless, at the date of incurrence of liability with respect to such Senior Funded Debt Consolidated Earnings Available for Interest Coverage shall not be less than 150% of Consolidated Interest Expense.

(iii) Additional Restrictions on Funded Debt of Restricted Subsidiaries. The Company will not permit any Restricted Subsidiary directly or indirectly to create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to any Funded Debt, provided that:

(A) any Restricted Subsidiary may become and remain liable with respect to Funded Debt of such Subsidiary owing to the Company or another Restricted Subsidiary; and

(B) any Restricted Subsidiary may become and remain liable with respect to secured Funded Debt as permitted by and within the limits specified in paragraphs (v) through (viii) of Section 6.05(c) (including the proviso thereto).

(iv) Treatment of Renewed Debt and of New Restricted Subsidiaries. For the purposes of this Section 6.05(d), any Funded Debt which is renewed, extended or refunded by the Company or any Restricted Subsidiary in an equal principal amount shall not be deemed to have been incurred when renewed, extended or refunded, and any corporation becoming a Restricted Subsidiary after the date of this Agreement shall be deemed to have incurred all of its outstanding Short-Term Debt and Funded Debt at the time it becomes a Restricted Subsidiary.

(e) Investments. The Company will not, and will not permit any Restricted Subsidiary to, make or permit to remain outstanding any Investment in or to any Person, except that the Company or any Restricted Subsidiary may:

(i) make or permit to remain outstanding loans or advances to any Restricted Subsidiary;

(ii) own, purchase or acquire stock, obligations or securities of a Restricted Subsidiary or of a corporation which immediately after such purchase or acquisition will be a Restricted Subsidiary;

(iii) own or permit to remain outstanding its Investments as of the date of, and as set forth in Exhibit G to, the Purchase Agreement;

(iv) own, purchase or acquire Permitted Investments; and

(v) make or permit to remain outstanding Restricted Investments made in compliance with Section 6.05(b).

For the purposes of this Section 6.05(e), when a Restricted Subsidiary is designated as an Unrestricted Subsidiary, an Investment shall be deemed to have been made in the Unrestricted Subsidiary at the time of the designation.

(f) Stock and Debt of Restricted Subsidiary.
The Company will not

(i) directly or indirectly sell, assign, pledge or otherwise dispose of any Debt of or any shares of stock of (or warrants, rights or options to acquire stock of) any Restricted Subsidiary except to a Restricted Subsidiary or except as directors' qualifying shares if required by applicable law;

(ii) permit any Restricted Subsidiary directly or indirectly to sell, assign, pledge or otherwise dispose of any Debt of the Company or any other Restricted Subsidiary, or any shares of stock of (or warrants, rights or options to acquire stock of) any other Restricted Subsidiary, except to the Company or another Restricted Subsidiary or as directors' qualifying shares if required by applicable law; or

(iii) permit any Restricted Subsidiary directly or indirectly to issue or sell any shares of its stock (or warrants, rights or options to acquire its

stock) except to the Company or another Restricted Subsidiary or as directors' qualifying shares if required by applicable law;

provided that, subject to compliance with Section 6.05(g)(iii), all Debt and stock of any Restricted Subsidiary owned by the Company and its other Restricted Subsidiaries may be simultaneously sold as an entirety for a consideration at least equal to the fair value thereof (as determined in good faith by resolution of the Board), if such Restricted Subsidiary does not at the time own (A) any Debt of the Company or (B) any Debt or stock of any other Restricted Subsidiary which is not also being simultaneously sold as an entirety in compliance with this proviso or Section 6.05(g)(ii)(C) and if immediately after giving effect to such transaction the Company would be permitted to incur at least \$1 of additional Senior Funded Debt pursuant to Section 6.05(d).

(g) Merger and Sale of Assets. The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly,

(i) consolidate with or merge into any other corporation or permit any other corporation to consolidate with or merge into it, except that

(A) the Company may consolidate with or merge into any other corporation if (1) the surviving corporation is a corporation organized and existing under the laws of the United States of America or a state thereof or the District of Columbia, with substantially all of its assets located and substantially all of its business conducted within the continental United States, (2) such corporation expressly assumes, by an agreement satisfactory in substance and form to the Trustee and to the holders of the Trust Certificates (which agreement may require the delivery in connection with such assumption of such opinions of counsel as the Trustee and such holders may reasonably require), the obligations of the Company under this Agreement and under the Guaranty and Purchase Agreement, (3) at the time of such transaction such corporation shall not be liable with respect to any Debt or Lien with respect to which it could

not become liable hereunder immediately after giving effect to such transaction, and (4) immediately after giving effect to such transaction no Event of Default or Inchoate Event of Default shall exist;

(B) any corporation (other than a Restricted Subsidiary) may consolidate with or merge into the Company or a Restricted Subsidiary if the Company or such Restricted Subsidiary, as the case may be, shall be the surviving corporation and if, immediately after giving effect to such transaction, (1) no Event of Default or Inchoate Event of Default shall exist, (2) substantially all of the assets of the Company or such Restricted Subsidiary, as the case may be, shall be located and substantially all its business shall be conducted within the continental United States and/or, in the case of such Restricted Subsidiary, Canada, and (3) the Company shall be permitted to become liable with respect to at least \$1 of additional Senior Funded Debt in compliance with Section 6.05(d);

(C) any Restricted Subsidiary may consolidate with or merge into the Company or another Restricted Subsidiary if the Company or such other Restricted Subsidiary, as the case may be, shall be the surviving corporation and if, immediately after giving effect to such transaction, no Event of Default or Inchoate Event of Default shall exist;

(ii) sell, lease, abandon or otherwise dispose of all or substantially all of its assets, except that

(A) the Company may sell, lease or otherwise dispose of all or substantially all of its assets to any corporation into which the Company may be consolidated or merged in compliance with subdivision (i)(A) of this Section 6.05(g), provided that each of the conditions set forth in such subdivision (i)(A) shall have been fulfilled;

(B) any Restricted Subsidiary may sell, lease or otherwise dispose of all or substanti-

ally all of its assets to the Company or another Restricted Subsidiary; and

(C) subject to compliance with subdivision (iii) of this Section 6.05(g), any Restricted Subsidiary may sell, lease or otherwise dispose of all or substantially all of its assets as an entirety for a consideration at least equal to the fair value thereof (as determined in good faith by the Board) if such Restricted Subsidiary does not at the time own (1) any Debt of the Company or (2) any Debt or stock of any other Restricted Subsidiary which is not also being simultaneously sold as an entirety in compliance with this subdivision (ii)(C) or the proviso to Section 6.05(f) and if immediately after giving effect to such transaction the Company would be permitted to incur at least \$1 of additional Senior Funded Debt pursuant to Section 6.05(d); or

(iii) sell, lease, abandon or otherwise dispose of any of its assets (except in the ordinary course of business or by a Restricted Subsidiary to the Company or another Restricted Subsidiary or in a transaction permitted by subdivision (i)(A) or (ii)(A) of this Section 6.05(g)), unless, immediately after giving effect to such proposed disposition, (A) the aggregate net book value or the market value, if higher, of all assets so disposed of (whether or not leased back) by the Company and its Restricted Subsidiaries during the then current fiscal year of the Company, such values to be determined as of the respective dates of disposition of such assets, shall not exceed 5% of an amount equal to the average of the aggregate net book value of all assets of the Company and its Restricted Subsidiaries as of the end of the three fiscal years of the Company most recently completed (or any fiscal year if there shall be less than three), (B) the assets so disposed of by the Company and its Restricted Subsidiaries during the then current fiscal year of the Company shall not have produced net income during the immediately preceding fiscal year which is more than 5% of an amount equal to the average of Consolidated Net Income for the immediately preceding three

fiscal years of the Company (or any fiscal year if there shall be less than three), and (C) no Event of Default or Inchoate Event of Default shall exist.

Nothing in this Section 6.05(g) shall be deemed to prohibit the Company or any Restricted Subsidiary from entering into any arrangement with any lender or investor or to which any lender or investor is a party, providing for the sale by the Company or any Restricted Subsidiary of all or any part of its assets (other than real property), if such arrangement provides for the use and possession (by lease or otherwise) by the Company or any Restricted Subsidiary of such property and the Debt incurred in connection with such arrangement is permitted by Section 6.05(d).

(h) Sale and Leasebacks. The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly become or remain liable as lessee or as guarantor or other surety with respect to any lease of any real property (i) whether now owned or hereafter acquired by the Company or any Restricted Subsidiary, which has been or is to be sold or transferred by the Company or any Restricted Subsidiary to any Person or (ii) which the Company or any Restricted Subsidiary intends to use for substantially the same purpose as any other property, whether now owned or hereafter acquired by the Company or any Restricted Subsidiary, which has been or is to be sold or transferred by the Company or any Restricted Subsidiary to any Person in connection with such lease, other than any such lease by the Company to a Restricted Subsidiary or by a Restricted Subsidiary to another Restricted Subsidiary.

(i) Sale or Discount of Receivables. The Company will not, and will not permit any Restricted Subsidiary to, sell with recourse, or discount or otherwise sell for less than the face value thereof, any of its notes or accounts receivable, except that the Company may sell with recourse lease accounts receivable in the ordinary course of business.

(j) Certain Contracts. The Company will not, and will not permit any Restricted Subsidiary to, enter into or be a party to:

(i) any contract providing for the making of loans, advances or capital contributions to any Person

(except where the obligation is limited to a fixed maximum amount and the incurrence of the Senior Funded Debt represented thereby shall then be permitted by Section 6.05(d) and the making of the Investment evidenced thereby shall then be permitted by Section 6.05(e)) or for the purchase of any property from any Person, in each case in order to enable such Person to maintain working capital, net worth or any other balance sheet condition or to pay debts, dividends or expenses;

(ii) any contract for the purchase of materials, supplies or other property or services if such contract (or any related document) requires that payment for such materials, supplies or other property or services shall be made regardless of whether or not delivery of such materials, supplies or other property or services is ever made or tendered;

(iii) any contract to rent or lease (as lessee) any real or personal property if such contract (or any related document) provides that the obligation to make payments thereunder is absolute and unconditional under conditions not customarily found in commercial leases then in general use or requires that the lessee purchase or otherwise acquire securities or obligations of the lessor, except such agreements to rent or lease where the obligation is limited to a fixed maximum amount and the incurrence of the Senior Funded Debt represented thereby shall then be permitted by Section 6.05(d);

(iv) any contract for the sale or use of materials, supplies or other property, or the rendering of services, if such contract (or any related document) requires that payment for such materials, supplies or other property, or the use thereof, or payment for such services, shall be subordinated to any indebtedness (of the purchaser or user of such materials, supplies or other property or the Person entitled to the benefit of such services) owed or to be owed to any Person; or

(v) any other contract which, in economic effect, is substantially equivalent to a guarantee,

except: (A) for endorsements of negotiable instruments for collection in the ordinary course of business; (B) where the obligation is limited to a fixed maximum amount and the incurrence of the Senior Funded Debt represented thereby shall then be permitted by Section 6.05(d) and the making of any Investment evidenced by such contract shall then be permitted by Section 6.05(e); (C) indemnities of trustees, lessors, lenders and third party security holders in connection with financings to which it is a party pursuant to indemnification provisions customary in such financings; (D) indemnities of its officers, directors and employees for acts undertaken in their corporate capacities; (E) indemnities of purchasers, sellers, underwriters, brokers, dealers and dealer-managers of securities of the Company (of which the Company may be deemed to be an issuer or otherwise) in connection with the offer, sale or purchase of such securities pursuant to indemnification provisions customary in such offers, sales or purchases; (F) indemnities of beneficial owners and lessors for the loss of certain tax benefits in connection with lease financing transactions in which it is the lessee, and indemnities of lessees for the loss of investment tax credit in connection with leases in which it is the lessor and is passing through such investment tax credit to the lessee, all pursuant to customary indemnification provisions as found in equipment leases; (G) payment of expenses of trustees, lessors, lenders and third party security holders and their respective counsel in connection with financings to which it is a party; and (H) a guarantee of (1) the performance by any Restricted Subsidiary of such Restricted Subsidiary's contracts (other than for the repayment of Debt or for the giving of any evidence of Debt) entered into in the ordinary course of such Restricted Subsidiary's business or (2) the performance by any Unrestricted Subsidiary of such Unrestricted Subsidiary's contracts for the management of railcars owned by others entered into in the ordinary course of such Unrestricted Subsidiary's business (which contracts shall not entail any obligation with respect to the repayment of Debt or for the giving of any evidence of Debt), provided that the contracts guaranteed pursuant to this clause (2) shall not at any time cover more than 15% of the railcars then subject to the railcar management programs of all Unrestricted Subsidiaries.

(k) Line of Business. The Company will not, and will not permit any Restricted Subsidiary to, enter into a line of business other than transportation

or leasing or other similar services unless such business is closely related to the business then being carried on by the Company and its Restricted Subsidiaries.

(l) Transactions With Stockholders and Affiliates. The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or lease any property to, or otherwise deal with, in the ordinary course of business or otherwise, (i) any Affiliate, (ii) any Person owning, beneficially or of record, directly or indirectly, either individually or together with all other Persons to whom such Person is related by blood, adoption or marriage, stock of the Company (of any class having ordinary voting power for the election of directors) aggregating 5% or more of such voting power or (iii) any Person related by blood, adoption or marriage to any Person described or coming within the provisions of clause (i) or (ii) of this Section 6.05(1), provided that (A) the Company may sell to, or purchase (within the limitations of Section 6.05(b)) from, any such Person shares of the Company's stock, (B) any such Person may be a director, officer or employee of the Company or any Restricted Subsidiary and may be paid reasonable compensation in connection therewith, and (C) such acts and transactions prohibited by this Section 6.05(1) may be performed or engaged in on terms not less favorable to the Company than if no such relationship described in clauses (i), (ii) and (iii) above existed and than would be obtainable at the time in comparable transactions of the Company in arm's-length dealings with third parties. For the purposes of clause (C) of the foregoing proviso, any such act or transaction shall be deemed to be performed or engaged in on terms not less favorable to the Company if (1) it shall involve an aggregate benefit to a Person or Affiliate referred to in clause (i), (ii) or (iii) above of less than \$2,000 per year or (2) all such acts and transactions (when considered in the aggregate) with such Person or Affiliate are on terms not less favorable to the Company under the standards set forth in such clause (C).

(m) Debt Service. The Company will not permit Consolidated Cash Flow at the end of any fiscal year of the Company to be less than 100% of Consolidated Current Maturities.

(n) Leases, etc. The Company will not, and will not permit any Restricted Subsidiary to, lease any of the Trust Equipment to any lessee other than pursuant to a Lease.

SECTION 6.06. Covenant To Secure Trust Certificates. The Company covenants that, if it or any Restricted Subsidiary shall create or assume any Lien upon any of its property or assets, whether now owned or hereafter acquired, other than Liens excepted by the provisions of Section 6.05(c) (unless prior written consent to the creation or assumption thereof shall have been obtained pursuant to Section 9.02 and such consent shall also contain a waiver of the requirements of this Section 6.06) it will make or cause to be made effective provision whereby the Trust Certificates will be secured by such Lien equally and ratably with any and all other Funded or Short-Term Debt thereby secured as long as any such other Funded or Short-Term Debt shall be so secured.

ARTICLE SEVEN

EVIDENCE OF RIGHTS OF HOLDERS OF TRUST CERTIFICATES

SECTION 7.01. Execution of Instruments. Any demand, request, waiver, consent or other instrument which this Agreement may require or permit to be signed and executed by the Holders of the Trust Certificates, may be in any number of concurrent instruments of similar tenor and may be signed or executed by the Holders of the Trust Certificates in person or by attorney appointed in writing.

SECTION 7.02. Proof of Execution of Instruments and of Holding of Trust Certificates. Proof (if deemed necessary by the Trustee) of the execution of any such demand, request, waiver, consent or other instrument, or of a writing appointing any such attorney, and of the holding by any person of the Trust Certificates shall be sufficient for any purpose of this Agreement if made in the following manner:

(a) The fact and date of the execution by any person of such demand, request, waiver, consent or other instrument or writing may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in the jurisdiction in which he acts, that the person signing the same acknowledged to him the execution thereof, or by an affidavit of a witness of such execution. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of authority of the Person executing the same. The Trustee may nevertheless in its discretion require

further proof in cases where it deems further proof desirable.

(b) The ownership of registered Trust Certificates shall be proved by the registry books.

The Trustee shall not be bound to recognize any person as a Holder unless and until his title to the Trust Certificates held by him is proved in the manner provided in this Article Seven.

Any demand, request, waiver, consent or other instrument of a Holder of any Trust Certificate shall bind all future Holders of the same Trust Certificate, or any Trust Certificate or Trust Certificates issued in exchange therefor or in lieu thereof, in respect of anything done or suffered by the Company or the Trustee pursuant thereto.

SECTION 7.03. Trust Certificates Owned by the Company. In determining whether the Holders of the requisite aggregate principal amount of Trust Certificates have concurred in any demand, direction, request, waiver, consent or other instrument provided for by this Agreement, Trust Certificates which are owned by the Company or by any other obligor upon the Trust Certificates (whether or not theretofore issued) or by any Affiliate of the Company shall be disregarded and deemed not to be outstanding for the purpose of any such determination, except that for the purpose of determining whether the Trustee shall be protected in relying on any such demand, direction, request, waiver, consent or other instrument, only Trust Certificates which the Trustee knows are so owned shall be disregarded.

ARTICLE EIGHT

THE TRUSTEE

SECTION 8.01. Acceptance of Trust. The Trustee accepts the trusts created by this Agreement upon the terms and conditions hereof, and agrees to perform the same as herein expressed.

SECTION 8.02. Duties and Responsibilities of the Trustee. In case an Event of Default has occurred and is continuing (and has not been cured), the Trustee

shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. The Trustee shall not be deemed to have knowledge of any Event of Default or Inchoate Event of Default under this Agreement prior to the time it shall have obtained actual knowledge thereof at its Corporate Trust Office, and all provisions of this Agreement applicable to the Trustee with respect to any Event of Default or Inchoate Event of Default shall apply only after the Trustee shall have knowledge thereof.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its wilful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

(b) the Trustee shall not be liable for any error of judgment made in good faith, unless it shall be proved that the Trustee was negligent in ascertain-

ing the pertinent facts, provided that the foregoing provisions of this subdivision (b) shall not excuse the Trustee from liability for its action or inaction which was contrary to the express provisions of this Agreement;

(c) the Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than 66 2/3% (or such greater or lesser percentage as is expressly provided elsewhere in this Agreement with respect to any specific action taken, suffered or omitted to be taken by the Trustee) in aggregate unpaid principal amount of the then outstanding Trust Certificates relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising or refraining from exercising any trust or power conferred upon the Trustee, under this Agreement;

(d) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, Trust Certificate, guarantee or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(e) the Trustee may consult with counsel and any Opinion of Counsel (from counsel who is not an employee of the Trustee or the Company) shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such Opinion of Counsel;

(f) the Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may consult with accountants and (with the prior approval of the Holders of 66 2/3% in aggregate unpaid principal amount of the then outstanding Trusts Certificates) other skilled persons to be selected and retained by it (other than persons regularly in its employ), and the Trustee shall not be liable for any action taken, suffered or omitted in good faith by it in accordance

with the advice or opinion of any such accountants or other skilled persons given within such person's or persons' particular area of competence as long as the Trustee shall exercise reasonable care and good faith in selecting such accountants or other skilled persons;

(g) the Trustee shall be under no obligation to exercise any of its rights or powers vested in it by this Agreement at the request, order or direction of any of the Holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby;

(h) none of the provisions contained in this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers including any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment, until it is indemnified to its reasonable satisfaction by the Company or by one or more Holders of the Trust Certificates against all liability and expenses; and

(i) the Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or statement of new numbers or any other statement or document that may be permitted or required to be filed, recorded, refiled or rerecorded in any jurisdiction to protect or perfect any of the security interests contemplated hereby.

Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 8.02.

SECTION 8.03. Application of Rentals. The Trustee agrees to apply the rentals received by it under Section 4.04 when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in Section 4.04.

SECTION 8.04. Funds Held by Trustee; Permitted Investments. Any funds at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein

provided need not be segregated in any manner except to the extent required by law and may be carried by the Trustee on deposit with itself, and the Trustee will not be responsible for any interest thereon, provided that any interest actually earned shall be applied by the Trustee in the manner provided herein for interest on Permitted Investments.

At any time, and from time to time, if at the time no Event of Default shall have occurred and be continuing, the Trustee, on Request, shall invest and reinvest Deposited Cash held by it or cash deposited with it (hereinafter in this Section 8.04 called "Replacement Funds") in Permitted Investments, at such prices, not in excess of the market price at the time of investment, including any premium and accrued interest, as are set forth in such Request, such Permitted Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates. Such Permitted Investments may be purchased from or through the bond department of the Trustee.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment or for payment or prepayment of the principal of or interest on any Trust Certificate, sell such Permitted Investments or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid by the Trustee for such Permitted Investments, including accrued interest.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rent received by it for that purpose under the provisions of Section 4.04(a), an amount equal to any expenses incurred in connection with any purchase or sale of Permitted Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Permitted Investments for a sum less than the amount paid therefor, including accrued interest.

The Company, if the Trustee has no knowledge of an Event of Default or an Inchoate Event of Default, shall be entitled to receive any interest allowed as provided in the first paragraph of this Section 8.04 and any interest (in excess of accrued interest paid from Deposited Cash or Replacement Funds at the time of purchase) or other profit

which may be realized from any sale or redemption of Permitted Investments.

SECTION 8.05. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; Compensation of Trustee; etc. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturers thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, NOR SHALL ANYTHING HEREIN BE CONSTRUED AS A WARRANTY (EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS) on the part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto, the security afforded thereby or otherwise.

The Trustee may perform its powers and duties with respect to the delivery and acceptance of the Trust Equipment by or through such attorney, agents and servants (who shall, in the case of the Equipment, be officers or agents of the Company) as it shall appoint, and shall be answerable only for its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it in respect thereof with reasonable care.

The Trustee shall not be responsible in any way for, and makes no representation with respect to, the recitals herein contained or the execution or validity or enforceability of this Agreement or the Trust Certificates (except for its own execution thereof) or the guaranty by the Company.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

Any moneys at any time held by the Trustee hereunder shall, until paid out or invested by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of the Holders of the Trust Certificates.

The Trustee shall deliver to each Holder of any Trust Certificate, promptly upon receipt thereof, a copy of each Request and of each other notice, communication, list, certification, opinion or application given or made by the Company to the Trustee under this Agreement, unless the Trustee shall have received notice from the Company or shall have been advised by such Holder that the Company has previously delivered a copy thereof to such Holder.

SECTION 8.06. Resignation and Removal; Successor Trustees. (a) The Trustee or any successor may resign and be discharged from the trust hereby created by giving notice thereof to the Company and to the Holders of the Trust Certificates, such resignation to become effective upon the appointment of a successor trustee and such successor's acceptance of such appointment. All rights of the Trustee to be indemnified by the Company pursuant to this Agreement shall survive the removal or resignation of the Trustee.

(b) The Trustee may be removed at any time by an instrument in writing signed by the Holders of not less than 66 2/3% in aggregate unpaid principal amount of the Trust Certificates then outstanding, delivered to the Trustee and to the Company.

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the Holders of a majority in aggregate unpaid principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Company and the Trustee. Until a successor trustee shall be appointed by the Holders of Trust Certificates as herein authorized, the Company by an instrument in writing executed by order of its board of directors or an executive committee thereof shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Company shall immediately and without further act be superseded by a successor trustee appointed by the Holders of Trust Certificates in the manner provided above if such appointment is made within one year after completion of the notice, in the manner provided in the next succeeding paragraph, of the appointment of a successor trustee by the Company. Every successor trustee appointed pursuant to this Section 8.06(c) shall be a national bank or a bank or trust company incorporated under

the laws of the State of New York or Connecticut, in each case having its principal office in the Borough of Manhattan, City and State of New York or in the City of Hartford, State of Connecticut, and having a capital and surplus of not less than \$100,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company shall give notice to the Holders of all outstanding Trust Certificates of each resignation or removal of the then Trustee and of each appointment by the Company of a successor trustee pursuant to this Section 8.06.

SECTION 8.07. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed under any of the methods herein provided shall execute, acknowledge and deliver to its predecessor trustee and to the Company an instrument in writing accepting such appointment hereunder and, subject to the provisions of Section 8.06(a), thereupon such successor, without any further act, deed or conveyance, shall become fully vested with the estates, properties, rights, powers and trusts of its predecessor in the trust hereunder with like effect as if originally named as the Trustee herein; but such predecessor shall, nevertheless, at Request of the Company or the written request of the successor, execute and deliver an instrument transferring to the successor all the estates, properties, rights, powers and trusts of such predecessor hereunder and shall duly assign, transfer and deliver all property and moneys held by it to its successor. Should any instrument in writing from the Company be required by any successor for more fully and effectually vesting in and confirming to it all estates, properties, rights, powers and duties as Trustee hereunder, the Company upon the request of such successor, shall make, execute and deliver the same. The Company shall promptly give notice of the appointment of such successor to the Holders of the Trust Certificates.

SECTION 8.08. Merger or Consolidation of Trustee. Any corporation into which the Trustee or any successor to it in the trust created by this Agreement may be merged, or with which it or any successor to it may be consolidated, or any corporation resulting from any merger or consolidation to which the Trustee or any successor to it shall be a party, shall be the successor trustee under this Agreement, provided such corporation is qualified under the provisions of Section 8.06, without the execution or filing of any instruments or any further act on the part of any of the parties hereto.

ARTICLE NINE

MISCELLANEOUS PROVISIONS

SECTION 9.01. Benefits Restricted to Parties and Holders. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon, or give to, any Person, other than the parties hereto and the Holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Agreement contained are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns, and the Holders of the Trust Certificates.

SECTION 9.02. Amendment or Waiver. Any provision of this Agreement may be amended or waived with the written consent of the Holders of not less than 66 2/3% of the aggregate unpaid principal amount of the Trust Certificates then outstanding, provided that without the consent of each Holder of the Trust Certificates affected thereby, no such amendment or waiver shall (a) reduce the amount of principal or premium, change the amount or dates of payment of installments of principal or of payments of premium, or reduce the rate or extend the time of payment of interest with respect to the Trust Certificates, (b) reduce the amount of or extend the time of payment of any rentals payable under this Agreement or release or provide for the release of any of the Trust Equipment or any other property or cash held by the Trustee in trust, otherwise than as expressly permitted by the present terms of this Agreement, (c) reduce the percent of the aggregate unpaid principal amount of Trust Certificates then outstanding, the Holders of which are required to approve any amendment or to effect any waiver, (d) increase the percentage of the principal amount of Trust Certificates the Holders of which may declare, or affect the right of any Holder to declare, Trust Certificates to be due and payable as provided in Section 5.01, or decrease the percentage of the principal amount of Trust Certificates the Holders of which may rescind and annul any declaration accelerating any Trust Certificates as provided in Section 5.04, (e) modify any of the provisions of the guaranty of the Company in respect of the Trust Certificates, or (f) permit the creation of any Lien with respect to the Trust Equipment or any Lease ranking prior to, or on a parity with, the Lien created

by this Agreement, or deprive any Holder of the benefit of the security interest created by this Agreement in all or any part of the Trust Equipment, Deposited Cash, Remitted Investments or any Lease for the security of his Trust Certificate.

SECTION 9.03. Illegality or Invalidity of Provision. In case any one or more of the provisions contained in this Agreement, in the Trust Certificates or the Purchase Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

SECTION 9.04. Date of Actual Execution. Although this Agreement, for convenience and for the purpose of reference, is dated as of January 1, 1980, the actual date of execution by the Company and by the Trustee is as indicated by their respective acknowledgments hereto annexed.

SECTION 9.05. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed by registered or certified mail, postage prepaid, addressed (a) if to the Company at Three Embarcadero Center, San Francisco, California 94111, to the attention of its Vice President-Finance, (b) if to the Trustee at One Constitution Plaza, Hartford, Connecticut 06115, to the attention of its Corporate Trust Department, (c) if to the Original Purchaser, at such address as is provided in the Schedule of Purchaser Information attached to the Purchase Agreement, (d) if to any subsequent holder of a registered Trust Certificate, to the address of such holder as it appears in the registration books maintained by the Trustee or such other address as such holder shall have furnished by notice to the Company and the Trustee, (e) if to any subsequent holder of an order Trust Certificate, to such address as such holder shall have furnished by notice to the Company and the Trustee, or, until an address is so furnished, to the address of the last holder of such Trust Certificate so furnishing an address to the Company and the Trustee, or (f) to such other address as the Company, the Trustee or any holder of a Trust Certificate, respectively, may designate by notice given to the others. An affidavit by any person representing or acting on behalf of the Company or the Trustee or an institutional Holder of the

Trust Certificates, as to such mailing, having the return receipt attached, shall be conclusive evidence of the giving of such notice or other communication.

SECTION 9.06. Successors and Assigns. Whenever in this Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all the covenants, promises and agreements in this Agreement contained by or on behalf of the Company or by or on behalf of the Trustee, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

SECTION 9.07. Effect of Headings. The Article and Section headings are for convenience only and shall not affect the construction hereof.

SECTION 9.08. Applicable Law. The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 9.09. Counterparts. This Agreement is being executed in several counterparts, each of which is an original and all of which are identical. Each counterpart of this Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument. It shall not be necessary in making proof of

this Agreement to produce or account for more than one counterpart.

IN WITNESS WHEREOF, the Trustee and the Company have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first above written.

(CORPORATE SEAL)

Attest:

By

Title: Assistant Secretary

THE CONNECTICUT BANK AND TRUST
COMPANY, as Trustee

By

Title: F. W. KAWAM
VICE PRESIDENT

(CORPORATE SEAL)

Attest:

By

Title: Secretary

BRAE CORPORATION

By

Title: Vice President - Finance

STATE OF *New York*)
COUNTY OF *New York*) : ss.:

On this *12* th day of February, 1980, before me personally appeared **E. W. KAWAM** to me personally known, who, being by me duly sworn, says that he is a VICE PRESIDENT of THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, that one of the seals affixed to the foregoing instrument is the seal of said corporation and that said instrument was on February *12*, 1980 signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

My Commission Expires

Kathleen Regan

Notary Public
KATHLEEN REGAN
NOTARY PUBLIC, State of New York
No. 30-4655135
Qualified in Nassau County
Certificate filed in New York County
Term Expires March 30, 1981

STATE OF CALIFORNIA)
: ss.:
COUNTY OF SAN FRANCISCO

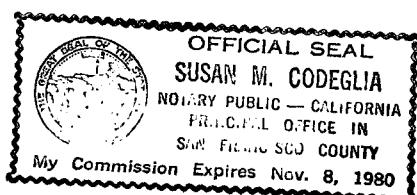
On this 11th day of February, 1980, before me personally appeared Lawrence Briscoe, to me personally known, who, being by me duly sworn, says that he is a Vice President-Finance of BRAE CORPORATION, a Delaware corporation, that one of the seals affixed to the foregoing instrument is the seal of said corporation and that said instrument was on February 11, 1980 signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

My Commission Expires Nov. 8, 1980

Susan M. Codeglia

Notary Public



EQUIPMENT DESCRIPTION

<u>Lessee</u>	<u>Number of Cars</u>	<u>Identification Nos. (Inclusive)</u>	<u>Physical Description</u>	<u>AAR Designation</u>
CHICAGO, WEST PULLMAN AND SOUTHERN RAIL- ROAD COMPANY*	250	CWP 300- CWP 549	52' 6", 100-ton Gondola Cars	GB
COLUMBIA & COWLITZ RAILWAY COMPANY**	50	CLC 3501- CLC 3550	52' 6", 70-ton Double 8' Plug doors, 2' offset Boxcars	XM or XP

* Lease Agreement, dated as of August 14, 1979, between such Lessee and the Company.

** Lease Agreement, dated as of July 13, 1979, between such Lessee and the Company.

BRAE CORPORATION

LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this day of, 197..., between the BRAE CORPORATION, a California corporation, Three Embarcadero Center, San Francisco, California 94111 ("BRAE"), as Lessor, and a corporation, (address of Lessee) ("Lessee"), as Lessee.

1. Scope of Agreement

A. BRAE agrees to lease to Lessee, and Lessee agrees to lease from BRAE, freight cars as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars."

B. It is the intent of the parties to this Agreement that BRAE shall at all times be and remain the lessor of the Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The lease pursuant to this Agreement with respect to each Car shall commence when such Car has been delivered, as provided in Section 3A hereof, and shall continue until fifteen (15) years (the "initial lease term") have expired from the actual date of delivery, as provided in Section 3A hereof, for the last of the Cars described on the Schedule on which such Car is described.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five consecutive periods of twelve months each (the "extended lease term") with respect to all of the Cars described on each Schedule, provided, however, that BRAE or Lessee may terminate this Agreement as to all, but not fewer than all, of the Cars on any Schedule by written notice delivered to the other not less than twelve months prior to the end of the initial lease term or any extended lease term.

3. Supply Provisions

A. BRAE will inspect each of the Cars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to BRAE that the sample Car which will be made available for Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and BRAE's determination that the Car conforms to the specifications ordered by BRAE and to all

applicable governmental regulatory specifications, and this Agreement has not been terminated, BRAE will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Cars shall be deemed delivered to Lessee upon acceptance by BRAE. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance of delivery by BRAE as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, BRAE can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of a Car, the lease hereunder with respect thereto shall commence upon acceptance by BRAE from the manufacturer, Lessee agrees to pay to BRAE the rent for such Car set forth in this Agreement. To move the Cars to Lessee's railroad line and insure optimal use of the Cars after the first loading of freight for each Car on the railroad line of Lessee (the "initial loading"), BRAE agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and BRAE, to issue movement orders with respect to such Cars to other railroad lines in accordance with ICC and AAR interchange agreements and rules.

B. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease freight cars from any other party until it shall have received all of the Cars on the Schedule or Schedules. Lessee shall give preference to BRAE and shall load the Cars leased from BRAE prior to loading substantially similar freight cars leased from other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks.

C. Additional Cars may be leased from BRAE by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by BRAE and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Cars, the delivery of any Car to Lessee shall be subject to manufacturer's delivery schedules, the availability of financing on terms satisfactory to BRAE and the mutual acknowledgment of the parties that the addition of such Cars is not likely to reduce Utilization (as defined in Section 6A hereof) of all Cars on lease to Lessee to less than 87.5 per cent in any calendar quarter. If, due to any of the factors listed in the preceding sentence, fewer than all of the Cars listed on a Schedule shall be delivered to Lessee, the initial lease term shall terminate fifteen (15) years from the date on which the final Car of the most recent group of Cars was delivered, as provided in Section 3A hereof.

4. Railroad Markings and Record Keeping

A. BRAE and Lessee agree that on or before delivery of any Cars to Lessee, said Cars will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. BRAE and Lessee further agree that any Car may also be marked with the name of BRAE and any other information required by an owner or secured party under a financing agreement entered into by BRAE in connection with the acquisition of such Car. All such names, insignia and other information shall comply with all applicable regulations.

B. At no cost to Lessee, BRAE shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but are not limited to the following: (i) appropriate AAR documents including an application for relief from AAR Car Service Rules 1 and 2; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

C. Each Car leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. BRAE shall, on behalf of Lessee, perform all record keeping functions related to the use of the Cars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as BRAE shall select.

D. All record keeping performed by BRAE hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by BRAE in a form suitable for reasonable inspection by Lessee from time to time during regular BRAE business hours. Lessee shall supply BRAE with such reports, including daily telephone reports of the number of Cars on Lessee's tracks, regarding the use of the Cars by Lessee on its railroad line as BRAE may reasonably request.

5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, BRAE will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to BRAE for any repairs required for damage not noted at the time of interchange. Lessee hereby transfers and assigns to BRAE all of its right, title and interest in any warranty in respect of the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by BRAE at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to BRAE.

B. Except as provided above, BRAE shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of BRAE, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by BRAE. BRAE shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars. Lessee may make running repairs to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without BRAE's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without BRAE's prior written consent, Lessee shall be liable to BRAE for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with BRAE.

C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules—Freight for freight cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by obtaining insurance. Lessee shall also maintain bodily injury and property damage liability insurance. Lessee shall furnish BRAE concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months with certificates of insurance with respect to the insurance required as aforesaid signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and BRAE (or its assignee) as their interests may appear.

D. BRAE agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car and on the lease, delivery

or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues. BRAE shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. BRAE and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. BRAE shall review all applicable tax returns prior to filing.

6. Lease Rental

A. Lessee agrees, subject to Section 6D hereof, to pay the following rent to BRAE for the use of the Cars:

(i) BRAE shall receive all payments made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "payments") if the utilization of all of the Cars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than 90 per cent. For the purpose of determining utilization, "Car Day" shall mean one day on which one Car is on lease hereunder, commencing on the initial loading of such Car. For the purpose of this Agreement, "Utilization" shall mean with respect to any period a fraction the numerator of which is (x) the aggregate number of Car Days for which payments are earned by the Lessee during such period, and the denominator of which is (y) the aggregate number of Car Days during such period. In addition, BRAE will receive, as additional rental, all monies earned by the Cars prior to their initial loading.

(ii) In the event Utilization exceeds 90 per cent in any calendar year, BRAE shall receive an amount equal to the BRAE Base Rental plus an amount equal to one-half of the payments earned in excess of the BRAE Base Rental. For the purpose hereof, BRAE Base Rental shall be an amount equal to the total payments for the calendar year multiplied by a fraction, the numerator of which is 90 per cent and the denominator of which is the Utilization for such calendar year. (The above determination of BRAE Base Rental insures that Lessee will, if Utilization is greater than 90 per cent in any calendar year, receive one-half of all the payments made by other railroads for use or handling of the Cars in excess of the BRAE Base Rental.)

(iii) If BRAE pays other railroads to move Cars in accordance with Section 3A hereof, except for any payments incurred to deliver such Cars to Lessee's railroad line, Lessee shall reimburse BRAE for such payments, but only from and out of the monies received by Lessee pursuant to Subsection 6A(ii) hereof.

(iv) The rental charges payable to BRAE by Lessee shall be paid from the payments received by Lessee in the following order until BRAE receives the amounts due it pursuant to this section: (1) incentive car hire payments; (2) straight car hire payments; (3) mileage charges and (4) other.

(v) In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Care Hire Agreement Code of Car Hire Rules—Freight and the appropriate amount due as a result thereof is received by BRAE, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of car hire payments ceased.

B. The calculations required above shall be made within five months after the end of each calendar year. However, to enable BRAE to meet its financial commitments, BRAE may, prior to such calculations, retain the payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly basis the approximate amount of the rental charges due BRAE, BRAE shall within three months after the end of each calendar quarter, calculate on a quarterly

basis rather than a yearly basis the amount due it pursuant to this section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.

C. If at any time during a calendar quarter, the number of days that the Cars have not earned car hire payments is such as to make it mathematically certain that the Utilization in such calendar quarter cannot be equal to or greater than 87.5 per cent, BRAE may, at its option and upon not less than ten (10) days' prior written notice to Lessee, terminate this Agreement as to such Cars as BRAE shall determine.

D. If the ICC shall, at any time, (1) issue an order reducing incentive car hire payments for Cars on an annual basis to less than three months without a corresponding increase in straight car hire payments or other monies available to both BRAE and Lessee at least equal in amount to such reduction or (2) determine that Lessee may not apply its incentive car hire receipts in payment of the rental charges set forth in this Section 6, BRAE may, at its election which shall be effective promptly upon written notice to Lessee, either (i) terminate this Agreement, or (ii) keep this Agreement in effect except that it shall be modified so that thereafter the rent which Lessee shall pay to BRAE for the use of the Cars, notwithstanding anything contained in Section 6A hereof to the contrary, shall be 100% of the payments, of whatever character, made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to, mileage charges, straight car hire payments and incentive car hire payments.

E. During the term of this Agreement, if any Car remains on Lessee's railroad tracks for more than seven consecutive days, BRAE may, at its option and upon not less than twenty-four (24) hours' prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. If any such Car remains on Lessee's railroad tracks more than seven consecutive days because Lessee has not given preference to the Cars as specified in Section 3B hereof, Lessee shall be liable for and remit to BRAE an amount equal to the payments Lessee would have earned if such Cars were in the physical possession and use of another railroad for the entire period.

7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business, provided that Lessee retain on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by BRAE in connection with the acquisition of Cars, *i.e.*, upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that the Cars be returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either BRAE or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars

or any interest therein or in this Agreement or any Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time.

8. Default

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due.

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days thereafter.

(iii) Any act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(vi) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.

(vii) Lessee shall be merged with or consolidated into another corporation which after such merger or consolidation shall have a net worth less than that of Lessee immediately prior thereto.

B. Upon the occurrence of any event of default, BRAE may, at its option,

(i) Terminate this Agreement, proceed by any lawful means to recover damages for a breach hereof, and terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate and thereupon BRAE may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee, provided that BRAE shall nevertheless have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to the date on which BRAE took such possession; or

(ii) Proceed by any lawful means to enforce performance by Lessee of this Agreement. Lessee agrees to bear the costs and expenses, including without limitation reasonable attorneys' fees, incurred by BRAE in connection with the exercise of its remedies pursuant to this Section 8B.

9. Termination

At the expiration or termination of this Agreement as to any Car, Lessee will surrender possession of such Car to BRAE by delivering the same to BRAE at such place reasonably convenient to Lessee as BRAE shall designate. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from such Car and the placing thereon of such markings as may be designated by BRAE, either, at the option of BRAE, (1) by

Lessee upon return of such Car to Lessee's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car. If such Car is not on the railroad line of Lessee upon termination, any cost of assembling, delivering, storing, and transporting such Car to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by BRAE. If such Car is on the railroad line of Lessee upon such expiration or termination or is subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five (5) working days remove Lessee's railroad markings from such Car and place thereon such markings as may be designated by BRAE. After the removal and replacement of markings, Lessee shall use its best efforts to load such Car with freight and deliver it to a connecting carrier for shipment. Lessee shall provide up to thirty (30) days' free storage on its railroad tracks for BRAE or the subsequent lessee of any terminated Car. If any Car is terminated pursuant to Sections 6C, 6E or 8 hereof prior to the end of its lease term, Lessee shall be liable to BRAE for all costs and expenses incurred by BRAE to repaint such Car and place thereon the markings and name or other insignia of BRAE's subsequent lessee.

10. Indemnities

BRAE will defend, indemnify and hold Lessee harmless from and against (1) any and all claims based upon loss or damage to the Cars, unless occurring while Lessee has physical possession of Cars and (2) any other type of claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars (unless occurring through the fault of Lessee), including without limitation claims with respect to the construction, purchase, delivery to Lessee's railroad line, ownership, leasing, return, use, maintenance, repair, replacement, operation or condition (whether defects, if any, are latent or are discoverable by BRAE or Lessee) of the Cars.

11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has all necessary corporate power and authority, permits and licenses to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to BRAE in writing, nor is Lessee a party to any agreement or instrument nor subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the ability of the Lessee to perform its obligations under this Agreement.

(v) Lessee has during the years 1964-1968 neither built, leased nor purchased any new or rebuilt freight cars.

12. Inspection

BRAE shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify BRAE of any accident connected with the malfunctioning or operation of the Cars, including in such report the

time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify BRAE in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Lessee shall furnish to BRAE promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements submitted to the ICC or its shareholders generally.

13. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of BRAE assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void. Lessee agrees to acknowledge, upon receipt, any assignment of this Agreement by BRAE to an owner or secured party under any financing agreement entered into by BRAE in connection with the acquisition of all or part of the Cars leased hereunder.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by BRAE in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7 hereof and in furtherance of this Agreement.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee only.

D. No failure or delay by BRAE shall constitute a waiver or otherwise affect or impair any right, power or remedy available to BRAE nor shall any waiver or indulgence by BRAE or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the State of California.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

G. No security interest in this Agreement, as chattel paper (as defined in the Uniform Commercial Code), may be created by the transfer of possession of any counterpart hereof other than the original counterpart hereof. The original counterpart hereof shall be marked "Original" and delivered to BRAE and all other counterparts hereof shall be duplicates and shall be marked "Duplicate."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

BRAE CORPORATION

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

EQUIPMENT SCHEDULE No.

BRAE CORPORATION hereby leases the following Cars to
pursuant to that certain Lease Agreement dated as of, 197...

A.A.R. Mech. Design	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars

BRAE CORPORATION

BY: _____

TITLE: _____

DATE: _____

BY: _____

TITLE:

DATE: _____

STATE OF }
COUNTY OF }

On this day of, 197..., before me personally appeared, to me personally known, who being by me duly sworn says that such person is of, that the foregoing Lease Agreement, Rider(s) No. and Equipment Schedule(s) No. were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

Notary Public

STATE OF }
COUNTY OF }

On this day of, 197..., before me personally appeared, to me personally known, who being by me duly sworn says that such person is of BRAE CORPORATION, that the foregoing Lease Agreement, Rider(s) No. and Equipment Schedule(s) No. were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

Notary Public

ASSIGNMENT OF LEASE AND AGREEMENT, dated as of
, 19 (this "Assignment"), by and between BRAE
CORPORATION, a Delaware corporation ("BRAE"), and THE
CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking
corporation, as Trustee (the "Trustee").

WHEREAS BRAE has entered into an Equipment Trust
Agreement dated as of January 1, 1980 with the Trustee
(such Equipment Trust Agreement, together with any amend-
ments or supplements thereto, being hereinafter called the
"Agreement");

WHEREAS BRAE and
(the "Lessee") have entered into a lease dated as of
, (such lease, together with any amendments
or supplements thereto, hereinafter called the "Lease"),
providing, among other things, for the leasing by BRAE to
the Lessee of units of the Trust Equipment (capitalized
terms used in this Assignment which are not defined herein
and which are defined in the Agreement having the respec-
tive meanings therein specified);

WHEREAS the Lease may also cover the leasing to
the Lessee of other equipment not included as part of the
Trust Equipment;

WHEREAS in order to provide security for the
obligations of BRAE under the Agreement and as an induce-
ment to the investor for which the Trustee is acting to
purchase Trust Certificates, BRAE, for security purposes,
has assigned in Section 4.09 of the Agreement its right,
title and interest in, to and under the Lease to the
Trustee as and only to the extent that the Lease relates
to the Trust Equipment; and

WHEREAS Section 4.09 of the Agreement requires
that BRAE execute and deliver to the Trustee this Assign-
ment for the purpose, among other things, of confirming
the assignment contained in the Agreement;

NOW, THEREFORE, in consideration of the payments
to be made and the covenants hereinafter mentioned to be
kept and performed, the parties hereto agree as follows:

1. BRAE hereby grants, pledges and assigns,
to the Trustee, as collateral security for the payment and
performance of BRAE's obligations under the Agreement, all

of BRAE's right, title and interest as Lessor under the Lease, but only to the extent such right, title and interest relates to the Trust Equipment set forth in Annex A hereto, including, without limitation, all rights to receive and collect all rentals, moneys and proceeds payable to or receivable by BRAE from the Lessee under or pursuant to the provisions of the Lease to the extent that the same are payable in respect of such Trust Equipment, whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the "Payments"); provided that, unless an Event of Default under the Agreement shall have occurred and be continuing, BRAE shall be entitled to collect and receive all such Payments and to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an event of default specified in the Lease, and to apply all such Payments to the payment of any and all of BRAE's obligations under the Agreement and to retain the balance of such Payments, if any. In furtherance of the foregoing assignment, but subject to the foregoing provisions of this paragraph, BRAE hereby irrevocably authorizes and empowers the Trustee in its own name, or in the name of its nominee, or in the name of BRAE or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which BRAE is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof. Whenever a Lease covers equipment other than Trust Equipment and the amount of any payment due to BRAE under such Lease as car hire payments (including both straight and incentive per diem), mileage charges or other rental revenues is calculated on an aggregate basis for all equipment leased thereunder, an amount equal to the Assigned Fraction (as hereinafter defined) of each such payment shall be deemed for the purposes of this Assignment to be payable with respect to such Trust Equipment leased under such Lease. The term "Assigned Fraction" as used herein shall mean at the time of determination a fraction the numerator of which shall be the number of units of Trust Equipment then leased under such Lease and the denominator of which shall be the aggregate number of units of equipment (including such units of Trust Equipment) then leased under such Lease.

2. This Assignment is executed only as security for the obligations of BRAE under the Agreement and under the guaranties endorsed on the Trust Certificate. The execution and delivery of this Assignment shall not subject

the Trustee to, or transfer, or pass, or in any way affect or modify, the liability of BRAE under the Lease, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment, all obligations of BRAE to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against BRAE or persons other than the Trustee and the Holders of the Trust Certificates.

3. To protect the security afforded by this Assignment, BRAE agrees as follows:

(a) BRAE will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides is to be performed by BRAE.

(b) BRAE will not consent to or permit or accept any prepayment or discount of rent or advance rent under the Lease.

(c) In the event that BRAE shall at any time receive any notice or other communication from the Lessee purporting to terminate or in any other way adversely and materially affecting the rights of BRAE under the Lease, BRAE will immediately deliver to the Trustee a copy of such notice or other communication.

(d) At BRAE's sole cost and expense, BRAE will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of BRAE under the Lease.

(e) Should BRAE fail to make any payment or to do any act which this Assignment requires BRAE to make or do, then the Trustee, without releasing BRAE from any obligation hereunder and after first making (unless an Event of Default under the Agreement shall have occurred and be continuing) written demand upon BRAE and affording BRAE a reasonable period of time within which to make such payment or do such act, may, but shall not be obligated to, make any such payment or do any such act in such manner and to such extent as the Trustee may deem necessary to

protect the security provided hereby, including, without limitation, appearing in and defending any action or proceeding purporting to affect the security hereof and the rights or powers of the Trustee and performing and discharging each and every obligation, covenant and agreement of BRAE contained in the Lease; and, in exercising any such powers, the Trustee may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorney's fees, and BRAE will reimburse the Trustee for such costs, expenses and fees.

4. Nothing contained in this Assignment shall in any way limit BRAE's obligations and agreements with respect to the Lease under Section 4.09 of the Agreement.

5. Upon the full discharge and satisfaction of all of BRAE's obligations under the Agreement, the guaranties endorsed on the Trust Certificates and this Assignment, all rights herein assigned to the Trustee shall terminate, and all right, title and interest of the Trustee in and to the Lease shall revert to BRAE, and the Trustee shall take such action as BRAE may reasonably request to confirm BRAE's right, title and interest in and to the Lease.

6. BRAE will, from time to time, do and perform any other act and will execute, acknowledge, deliver and record, register and file (and will rerecord, re-register or refile whenever required) any and all further instruments required by law or reasonably requested by the Trustee in order to confirm or further assure the interests of the Trustee hereunder.

7. If an Event of Default shall occur and be continuing under the Agreement, the Trustee may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Trustee hereunder. The Trustee will give written notice to BRAE and the Lessee of any such assignment.

8. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by the laws of the United States of America permitting filing with the Interstate Commerce Commission.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective names, by officers thereunto duly authorized, and their respective seals to be affixed and duly attested, all as of the date first above written.

BRAE CORPORATION,

[Corporate Seal]

By _____
Title:

Attest:

Title:

THE CONNECTICUT BANK AND TRUST
COMPANY, as Trustee,

[Corporate Seal]

By _____
Title:

Attest:

Title:

STATE OF _____ ,)
COUNTY OF _____ ,) ss:

On this day of , before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of BRAE CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF _____ ,)
COUNTY OF _____ ,) ss:

On this day of , before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a of The Connecticut Bank and Trust Company, a Connecticut banking corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

ANNEX A

<u>No. of Units</u>	<u>Road Numbers</u>	<u>Description</u>	AAR Mechanical — <u>Designation</u>
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